

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

**14IWCC0151**

Anthony Sarlo,  
Petitioner,  
vs.

NO: 11 WC 28400

City of Chicago,  
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary tota; disability, permanent partial disability, medical expenses, penalties credits/reimbursement to Respondent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

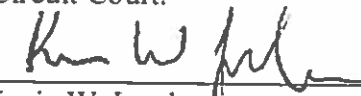
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 24, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **FEB 27 2014**  
KWL/vf  
O-2/11/14  
42

  
Kevin W. Lamborn

  
Thomas J. Tyrrell

  
Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

SARLO, ANTHONY

Employee/Petitioner

14IWCC0151  
Case# 11WC028400

CITY OF CHICAGO

Employer/Respondent

On 6/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0154 KROL BONGIORNO & GIVEN LTD  
CHARLIE GIVEN  
120 N LASALLE ST SUITE 1150  
CHICAGO, IL 60602

0113 CITY OF CHICAGO  
NANCY J SHEPARD  
30 N LASALLE ST SUITE 800  
CHICAGO, IL 60602

STATE OF ILLINOIS )

)SS.

COUNTY OF COOK )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

**14IWCC0151**

Case # 11 WC 28400

**Anthony Sarlo**

Employee/Petitioner

v.

Consolidated cases: N/A

**City of Chicago**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **May 8, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☒ Other credit/reimbursement to Respondent

14IWCC0151

FINDINGS

On **June 3, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment as explained *infra*.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident as explained *infra*.

In the year preceding the injury, Petitioner earned **\$70,257.72**; the average weekly wage was **\$1,351.11**.

On the date of accident, Petitioner was **46** years of age, *married* with **2** dependent children.

Petitioner *has* received all reasonable and necessary medical services as explained *infra*.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services as explained *infra*.

Respondent shall be given a credit of **\$60,606.93** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$81,158.39** for other benefits, for a total credit of **\$141,765.32** as explained *infra*.

Respondent is entitled to a credit of **\$2,924.00** under Section 8(j) of the Act as explained *infra*.

ORDER

As explained in the Arbitration Decision Addendum, Petitioner failed to establish that he sustained a compensable accident as claimed. Except as otherwise addressed in the Arbitration Decision Addendum, all other issues are moot and all requested compensation and benefits are denied. Petitioner's claim for penalties and fees is specifically denied.

Respondent shall be given a credit of **\$60,606.93** for temporary total disability benefits paid, **\$81,158.39** for other benefits paid, and a credit of **\$2,924.00** under Section 8(j) of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

**June 24, 2013**

Date

JUN 24 2013

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**ARBITRATION DECISION *ADDENDUM***

**Anthony Sarlo**  
Employee/Petitioner

v.

**City of Chicago**  
Employer/Respondent

Case # **11 WC 28400**

Consolidated cases: **N/A**

**14IWCC0151**

**FINDINGS OF FACT**

The issues in dispute are whether Petitioner sustained a compensable accident, causal connection, Respondent's liability for certain medical bills, a period of temporary total disability benefits, penalties and fees pursuant to Sections 16, 19(k), 19(l), the nature and extent of Petitioner's injury, and Respondent's entitlement to certain credits. *See* Arbitrator's Exhibit ("AX") 1. The parties have stipulated to all other issues.

*Background*

Petitioner testified about, and the medical records reflect, a medical history remarkable for an endoscopic hemilaryngectomy on October 18, 2005 due to a T1 right true vocal cord squamous cell carcinoma. PX2 at 117-121. Petitioner is a former boxer. PX2 at 122.

Petitioner testified that he had no prior neck or right shoulder problems. On cross examination, Petitioner testified that he had no such problems and that he had never been to a doctor for neck pain or upper back or lower back complaints to his recollection. He also testified that he only had a minimal injury while working for Respondent in the past and that he has no prior workers' compensation claims for injuries.

Petitioner also acknowledged that he was involved in a motor vehicle accident 12 years ago which involved his right shoulder. Petitioner testified that this accident did not involve his neck although he did have some tension in the neck for which he took some muscle relaxers. Petitioner testified that he had rotator cuff surgery to the right shoulder after this car accident. The Arbitrator notes that Petitioner did not testify about this during direct examination, but did testify on re-direct examination that the accident was in 2000-2001 and did not result in any permanent restrictions or problems with the right shoulder or neck or upper back.

Petitioner testified that he began working for Respondent in January of 2000 and was employed with Respondent on June 3, 2011 as a truck driver in the fleet management department. On that date, Petitioner testified that he was checking the fluids in a bus which required him to pull the hood up and toward him from where it opens by the windshield. He testified that the hood is about 5' long and that he is 6'1 tall, so he has to reach with the full length of his arm to open the hood of the bus. Petitioner testified that when he opened the hood, he felt pain in his neck, right shoulder and down the right side of his back. Petitioner is right hand dominant. On cross examination, Petitioner testified that he did not report an injury to his neck, shoulder or right upper back on June 3, 2011 and that he did not go see a doctor that day.

*Medical Treatment*

On June 15, 2011, Petitioner saw his primary care physician, Dr. Patton, at Advocate Medical Center. PX2 at 78-80. Petitioner reported back pain that started at "bottom of his neck and extends to the lumbar spine[;] 6-7

years[;] Better with Flexeril, massage (Masseuse is better then [sic] chiropractor)[.]” Id. He also reported a motor vehicle accident 12 years ago and his understanding that he had arthritis. Id. He further reported: “Pain always returns and recently recalled findings 12 years ago[;] Pain coming more frequently, every few days[;] truck driver, does a lot of sitting[;] Occasionally pain is severe enough where pt can not turn his torso side to side[;] Not sure what makes the pain worse[;] No tingling or numbness[;] No bowel/urinary incontinence[;] No saddle anesthesia[; and] No radiation into legs.” Id.

On examination, Dr. Patton noted that Petitioner's cervical, thoracolumbar, and lumbar spine showed no abnormalities and that his thoracic spine showed abnormalities “pin-point TTP [tenderness to palpation] at T3-4.” Id. Dr. Patton diagnosed Petitioner with upper back pain and a backache. Id. She noted that it was a “likely progression of arthritis[.]” ordered x-rays of the thoracic spine to rule out fractures/compressions as Petitioner “is a truck driver; possible referral to Ortho[.]” prescribed Norco for acute pain, restricted Petitioner from driving while on the medication, and recommended physical therapy to guide work out “regime for back stabilization, weight loss[.]” Id. Petitioner's thoracic spine x-ray was normal. PX2 at 81.

On cross examination, Petitioner testified that this was his first treatment for the alleged injury and that he did not tell the doctor about the alleged incident at work because he did not think that it was that serious; he may have pulled a muscle. Petitioner also acknowledged that he worked from June 3, 2011 through June 15, 2011 during which time he was not placed off work by a physician.

On re-direct examination, Petitioner testified that he was unsure how he could be at work given the pain that he experienced in his neck and right shoulder during this period of time and that he was in severe neck and upper back pain.

On July 5, 2011, Petitioner went to the emergency room at Advocate Lutheran General Hospital reporting right sided back pain in the thoracic region which was ongoing since about a month ago and had worsened last week. PX2 at 22. The nursing triage note reflects that Petitioner's chief complaint was “RIGHT shoulder pain radiating down RIGHT arm x4 days, saw PMD, was prescribed Vicodin and Flexeril without relief. Pt tearful in triage.” Id. He also reported that it hurt anytime he moved his shoulder, pain radiating from the right scapula or shoulder, and no numbness/tingling/paresthesias down the arm or neck pain. Id. on examination, Petitioner had paraspinal and midthoracic tenderness to the right lateral region, spasm in the muscle that is a trigger point for the pain which is aggravated by movement of the shoulder, full range of motion in the shoulders, no bony tenderness, intact motor at 5/5 in the right upper extremity, sensation intact to light touch, no mid line neck pain, and full range of motion in the neck. PX2 at 23. Petitioner received two trigger point injections in the paraspinal region of the thoracic back, received prescriptions for Norco, Valium, and an anti-inflammatory, and was discharged home. Id. Petitioner was restricted from driving and placed off work if this restriction could not be accommodated. PX2 at 77.

On cross examination, Petitioner testified that he worked through July 5, 2011 and went to the emergency room because of the pain in his neck, shoulder, and upper back. Petitioner testified that he told the emergency room staff that it was work related. Petitioner followed up with his primary care physician the next day and told her about the injury, but he did not think that it was that serious or that he messed up his neck that bad. Petitioner could not recall if he explained this in detail at the time.

On July 6, 2011, Petitioner followed up with Dr. Patton after his discharge from the emergency room. PX2 at 75-77. Petitioner reported: “Back pain mainly in the upper thoracic area[;] 6-7 years[;] Better with Flexeril, massage (Masseuse is better then [sic] chiropractor)[.]” Was here couple of weeks ago and had -ive thoracic

xray[;] Pain worsened yesterday, went to ED, was given Valium (taking q4)/hydrocodone (taking q4-6)/ibuprofen and had to Marcaine injections[;] Dialuadid did not provide any relief [;] Toradol helped a great deal[;] Pain was between the R scapula and spine with radiation into forearm[;] Obvious muscle spasm was seen[;] Currently pt states he is 100% better but still has some residual pain radiating into the R forearm[; and] Has not gone to PT as he only obtained referral yesterday.” Id.

On examination, Dr. Patton noted tenderness to palpation over the right mid back peers spinal muscles without spasm. Id. She noted that Petitioner's thoracic spine was “ok” and that he had intact strength. Id. She also noted that Petitioner was better with direct injections to the muscle. Id. Dr. Patton noted that Petitioner likely had muscle spasms that required stretches, she emphasized the need for physical therapy, and reiterated the importance of not drinking alcohol while taking Norco or Valium and restricted him from driving a bus while taking Norco or Valium. Id.

Petitioner testified that he was referred to MercyWorks by his boss, Wayne Knato. On July 11, 2011, Petitioner went to MercyWorks and reported that on June 3, 2011 he lifted the hood of the bus with his right arm and felt posterior neck pain radiating to the shoulder and arm on the right side. PX4 at 4-5, 34. Petitioner denied numbness or weakness, reported persistent pain despite using Vicodin, and that he was seen by his primary doctor and had a normal back x-ray. Id. On examination of the neck, Petitioner had active range of motion, flexion to 60°, extension to 25°, rotation to 60° bilaterally, and a positive Spurling's test. Id. on examination of the shoulder, Petitioner had full active range of motion, negative Hawkins/Neer's/drop arm test's, intact neurovascular signs, and pain radiating from the posterior shoulder to the right trapezius and posterior to anterior shoulder and right arm anteriorly. Id. Dr. Aranas diagnosed Petitioner with cervical radiculopathy, prescribed Napralan and Vicodin, ordered a cervical spine MRI, and placed Petitioner off work. Id.

Petitioner returned to MercyWorks on July 14, 2011 reporting persistent pain with slight relief with prescription medication use and remained off work. PX4 at 5, 32-33. Petitioner underwent a cervical MRI without contrast on July 18, 2011. PX3 at 17-18. The interpreting radiologist noted the following: (1) central herniation C5-6 and right herniations C6-7 with foraminal narrowing; and (2) minimal bulge C3-4 and C4-5. Id. Petitioner returned to MercyWorks on July 19, 2011 reporting that his medicine did not work and increasing pain. PX4 at 5-6, 30-31. Dr. Aranas referred Petitioner to an orthopedic spine specialist and kept Petitioner off work. Id. Petitioner testified the specialist was Dr. Wehner.

On July 29, 2011, Petitioner saw Dr. Wehner reporting that he initially thought he pulled a muscle on June 3, 2011 “when he was pulling the hood up from his truck and injured his neck and right shoulder area.” PX3 at 14-15, 20. He also reported pain radiating down his right arm to the dorsum of the hand with some associated numbness. Id. On examination, Dr. Wehner noted that Petitioner was in mild to moderate distress, was rubbing the right side of his neck and right arm and elbow constantly, full range of motion with a tendency to sit with his neck cocked to the left, increased pain with side bending to the right and side rotation to the right, some trace weakness of the right triceps, symmetric biceps/triceps/brachial radialis reflexes at 1+, and no atrophy or edema. Id. She reviewed Petitioner's MRI which she interpreted to show a focal disc herniation at C6-7 on the right and a smaller disc herniation at C5-6. Id. Dr. Wehner diagnosed Petitioner with cervicalgia and right radiculopathy with a radiologic findings of a right C6-7 herniated disc. Id. She recommended a Medrol Dosepak, some Neurontin, and Norco as needed, prescribed a short course of physical therapy, and placed Petitioner off work. Id.

On July 29, 2011, Petitioner's counsel sent a letter to Respondent on Petitioner's behalf indicating that he had not received temporary total disability benefits and asking for follow up on recommended medical care. PX6 at 1-3.

On August 1, 2011, Petitioner returned to MercyWorks reporting persistent pain temporarily relieved by prescribed medication. PX4 at 6, 28-29. Dr. Aranas kept Petitioner off work. Id.

On August 5, 2011, Petitioner's counsel sent a letter to Respondent on Petitioner's behalf requesting that it follow up on its investigation into Petitioner's claim and attaching updated medical records. PX6 at 4-13.

On August 12, 2011, Petitioner saw Dr. Wehner and reported being in constant neck and right shoulder pain which was no better. PX3 at 13, 16-17, 25. Petitioner also reported that he was unable to obtain the prescribed medications other than gabapentin and the Medrol Dosepak because Respondent would not approve it. Id. On examination, Dr. Wehner noted that Petitioner had full range of motion in the neck but he tended to hold it tilted to the left, full upper extremity strength, symmetric reflexes at 2+, and she noted that Petitioner continually rubbed his right trapezial area. Id. Petitioner requested to return to work full duty and Dr. Wehner noted that Petitioner's financial constraints and lack of insurance at the time. Id. She maintained her recommendations for medication and physical therapy, but released Petitioner back to full duty work based on her physical examination of him and noted that if Petitioner took Norco he should not do so while working. Id.

Petitioner also went to MercyWorks on August 12, 2011 reporting that he was still in pain but he had to go to work. PX4 at 6-7, 26-27. On examination of the neck, Petitioner had full range of motion. Id. on examination of the shoulder, Petitioner had range of motion on abduction to 120° and 5/5 strength bilaterally. Id. Dr. Soler noted that Dr. Wehner had released Petitioner to full duty work and had a physical therapy order as well. Id. He diagnosed Petitioner with a herniated disc in the neck, noted that Petitioner would continue in physical therapy for 3 to 4 weeks, and scheduled a follow-up visit. Id. Petitioner was released to full duty work effective August 15, 2011. Id.

Petitioner testified that he was referred to Dr. Koutsky by a friend and saw him for a second opinion. On September 23, 2011, Petitioner saw Dr. Koutsky for an evaluation of right upper extremity radicular pain and neck pain. PX1 at 111-112. He reported some numbness, tingling and weakness in the right arm. Id. Petitioner also described symptoms beginning on June 3, 2011 "after she sustained a work-related injury while working for the city of Chicago as a truck driver" when he was pulling, click to check fluids of an engine and noticed a sharp pain in his right shoulder as well as in his neck radiating down his right arm which included some numbness and tingling. Id. Dr. Koutsky examined Petitioner's right shoulder which showed a positive impingement sign, some weakness in the rotator cuff distribution, and a negative drop arm test and sulcus test. Id. Neurologically, Petitioner's right shoulder abductors and right triceps were weaker than on the left, he had some decreased and wreck sensation in the right middle finger compared to the left side, symmetrical deep tendon reflexes in the arms with exception of right tricipital reflex which was weak, positive right sided Spurling's test, negative L'Hermitte's test, no clonus noted, negative Hoffman sign, and some paracervical muscle tenderness and spasm to palpation with limited range of motion. Id.

Dr. Koutsky reviewed Petitioner's July 18, 2011 MRI scan of the cervical spine which he interpreted to show multiple levels of spondylotic changes, loss of normal cervical lordosis, and moderate right-sided disc herniation at C6-7, mild to moderate left sided disc protrusions at C4-5 and C5-6, and no evidence of any fracture. Id. He diagnosed Petitioner with cervical disc herniation with radiculopathy made a differential diagnosis of right shoulder pain rule out rotator cuff pathology. Id. Dr. Koutsky stated that Petitioner presented



with these conditions after a work related injury on June 3, 2011. Id. he ordered continued physical therapy, referred Petitioner to a pain clinic for cervical epidural injections for the disc herniation, prescribed pain medication, and kept Petitioner off work. Id.

Respondent issued a check dated September 23, 2011 to Petitioner for \$4,375.02. PX6 at 14-15. Petitioner testified that he provided the July 12, 2011 and August 14, 2011 off work slips to Wayne via fax, but this check was not issued until September 23, 2011.

On October 20, 2011, Dr. Koutsky diagnosed Petitioner with cervical spondylosis, stenosis, and radiculitis. PX1 at 110. He ordered continued physical therapy for the neck, and indicated his continued recommendation for a right shoulder MRI to rule out possibility of a rotator cuff injury. Id. In the interim, he refilled Petitioner's pain medications and kept Petitioner off work. Id.

On November 3, 2011, Dr. Koutsky reviewed Petitioner's right shoulder MRI scan which he noted showed evidence of supraspinatus tendinosis, some irregularity on the undersurface of the myotendinous junction consistent with a possible partial tear, no full thickness tear noted, some degenerative changes, and an intact labrum and biceps tendon. PX1 at 109.

On November 17, 2011, Petitioner saw Dr. Koutsky reporting a lot of disabling pain in the neck and right upper extremity and limited improvement of his symptomatology with one injection while awaiting approval of the second injection. PX1 at 108. Petitioner continued in physical therapy. Id. Dr. Koutsky noted that Petitioner's shoulder MRI scan showed a partial thickness rotator cuff tear. Id. He diagnosed Petitioner with cervical disc herniation and disabling cervical radiculopathy which was related to his injury at work. Id. Dr. Koutsky referred Petitioner to Dr. Brown for a neurosurgical evaluation, refilled Petitioner's medications, and kept him off work. Id.

On December 15, 2011, Petitioner saw Dr. Koutsky reporting a lot of disabling pain in the neck and right upper extremity and limited improvement of his symptomatology with two injections while awaiting approval of the third injection. PX1 at 107. He diagnosed Petitioner with cervical disc herniation which was work related and noted that Petitioner's MRI scan showed a herniated disc. Id. Dr. Koutsky also noted that Petitioner awaited approval for his third injection, continued physical therapy, and a neurosurgical consultation with Dr. Brown. Id. In the interim, he refilled Petitioner's medications and kept him off work. Id.

On January 19, 2012 and February 13, 2012, Petitioner saw Dr. Koutsky who diagnosed him with a cervical disc herniation and radiculopathy for which he noted conservative management had failed and recommended an anterior cervical decompression and fusion with instrumentation to be preceded by surgical clearance given Petitioner's medical history. PX1 at 105-106. In the interim, he refilled Petitioner's medications and kept him off work. Id.

Petitioner underwent the recommended surgery performed by Dr. Koutsky and Dr. Brown on March 21, 2012. PX1 at 104, 129-134. Pre-and postoperatively, Petitioner was diagnosed with chronic right C7 radiculopathy due to herniated disc at C6-7 on the right. Id. Drs. Koutsky and Brown performed an anterior cervical discectomy and fusion using a cage, allograft and plate at C6-C7. Id.

On April 5, 2012, Petitioner returned to Dr. Koutsky post operatively reporting a fair amount of discomfort and improvement in his arm symptoms. PX1 at 103. Dr. Koutsky diagnosed Petitioner as status post cervical

fusion, ordered continued hard collar immobilization, refilled Petitioner's prescriptions, ordered x-rays at his next visit, and kept him off work. Id.

On April 19, 2012, Petitioner saw Dr. Koutsky five weeks postoperatively reporting anxiousness to come out of his collar. PX1 at 102. Dr. Koutsky reviewed cervical spine x-rays which showed a solid fusion with instrumentation in a good position at C6-7. Id. He ordered discontinuation of the collar, physical therapy, refilled Petitioner's medications, kept him off work. Id. Petitioner testified that he underwent the recommended physical therapy.

On May 17, 2012, Petitioner saw Dr. Koutsky reporting a fair amount of discomfort including numbness and tingling down his right upper extremity and concern about residual arm symptoms. PX1 at 101. Dr. Koutsky reviewed cervical spine x-rays which showed a solid fusion with instrumentation in a good position at C6-7. Id. He diagnosed Petitioner with chronic cervical radiculitis status post cervical fusion, ordered an MRI of the cervical spine with contrast and continued physical therapy, and kept Petitioner off work. Id.

Petitioner underwent the recommended cervical spine MRI on June 8, 2012. PX1 at 113-114. The interpreting radiologist found following: (1) MR pattern compatible with anterior cervical fusion at C6 and C7 with discectomy; (2) prominent degenerative changes at C4-C5 with bilateral uncovertebral junction osteophytes and neural foraminal narrowing with suspected compression of the bilateral C5 nerve roots; and (3) degenerative changes of the cervical spine at C5-C6 with bilateral uncovertebral junction osteophytes and neural foraminal narrowing and suspected bilateral encroachment on the C6 nerve roots for which he recommended a clinical correlation. Id.

On June 18, 2012, Petitioner saw Dr. Koutsky reporting some pain in the neck radiating to his right upper extremity. PX1 at 99. Dr. Koutsky reviewed Petitioner's June 8, 2012 MRI which he interpreted to show evidence of anterior cervical decompression and fusion at C6-7, some generalized left paracentral disc protrusions at C4-5 and C5-6, and no evidence of any right-sided nerve root impingement, or abnormal enhancement, fracture, or spinal cord impingement. Id. He ordered continued physical therapy, refilled Petitioner's pain medications, and kept Petitioner off work. Id.

On July 30, 2012, Petitioner reported fair amount of discomfort in his neck and upper extremity. PX1 at 98. Dr. Koutsky ordered continued physical therapy and, refilled Petitioner's medications, kept him off work. Id.

On August 27, 2012, Petitioner saw Dr. Koutsky reporting some progress in therapy and continued chronic radiculitis. PX1 at 97. Dr. Koutsky noted that Petitioner's MRI scan from a few months ago looked good and showed no evidence of active nerve root impingement. Id. However, given Petitioner's chronic radicular symptoms he recommended cervical epidural injections and kept Petitioner off work. Id. Petitioner testified that he received the recommended steroid injections on October 31, 2012, November 14, 2012, and December 10, 2012.

On September 27, 2012, Petitioner saw Dr. Koutsky reporting chronic radiculitis and inflammation of the nerve root as well as undergoing the recommended physical therapy. PX1 at 96. Dr. Koutsky noted that they were waiting for approval of the recommended cervical epidural injection. Id. He noted that Petitioner had chronic neuritis after his surgery and noted that Petitioner's last MRI scan looked good and showed no evidence of active compression. Id. Dr. Koutsky also noted that Petitioner had some chronic nerve root inflammation and reiterated his recommendation for cervical epidural injection and kept Petitioner off work. Id.

On November 8, 2012, Petitioner saw Dr. Koutsky reporting chronic radiculitis, having completed therapy a couple of weeks prior, taking medication on an as needed basis, and anxiousness to return to work. PX1 at 95. Dr. Koutsky noted that Petitioner was neurologically stable and that his recent MRI scan looked good. Id. He released Petitioner to return to work effective November 16, 2012. Id. Petitioner testified that he returned to full duty work on December 3, 2012.

On December 6, 2012, Petitioner saw Dr. Koutsky and reported some residual radicular symptoms, taking medicine on an as needed basis, and working full duty through his discomfort. PX1 at 94. Petitioner was to continue with his therapy at home and scheduled for a third injection. Id. Dr. Koutsky noted that Petitioner's residual radicular symptoms may never "clear up 100%," but in the interim he noted that Petitioner would continue to work full duty. Id.

On January 11, 2013, Dr. Koutsky noted that he thought Petitioner was at maximum medical improvement, but scheduled a final follow-up visit in one month. PX1 at 93. On February 15, 2013, Dr. Koutsky placed Petitioner at maximum medical improvement and returned him to work without restrictions effective February 18, 2013. PX1 at 35-37.

Regarding his current condition, Petitioner testified that he is in constant pain and has constant stiffness, and that it is difficult for him to do normal things (i.e., changing lights, washing windows at home, playing with his children, playing basketball as much as before his injury, playing lacrosse or football, starting a lawnmower, sleeping, etc). Petitioner testified that he stretches as much as he can.

Petitioner also testified that his current job is as a motor truck driver, the same position he held before his claimed injury, and that he receives the same rate of pay. Among other general responsibilities, Petitioner's job duties include delivery, checking vehicle fluids, and operating a lift gate. Petitioner testified that, while doing these activities, he has pain. Petitioner also testified that he is not responsible for off-loading. Petitioner testified that he takes over-the-counter medications now as needed and that he has not re-injured himself after June 3, 2011.

### ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

**In support of the Arbitrator's decision relating to Issue (C), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:**

The Arbitrator finds that Petitioner did not sustain an accident that arose out of and in the course of her employment with Respondent as claimed. In so finding, the Arbitrator notes various inconsistencies in Petitioner's testimony when viewed in light of the record as a whole and finds that the Petitioner's testimony is not credible.

Petitioner testified that he suffered an injury on June 3, 2011, but he did not report his injury right away because he did not think it was that severe. On cross examination, however, Petitioner testified about neck and right shoulder pain so severe that he was unsure how he managed to work full duty for weeks between the claimed

injury at work and his first doctor's visit. Moreover, while notice is not a disputed issue, it is notable that Petitioner did not notify his employer of the alleged accident on June 3, 2011 until July 11, 2011, 39 days later, and that he did not notify his employer or his primary care physician on June 15, 2011 about the alleged incident at work.

In fact, the June 3, 2011 through July 11, 2011 medical records are devoid of any reference to an incident, injury or accident at work on June 3, 2011. To the contrary, Dr. Patton's June 15, 2011 progress notes reflect Petitioner's stated history of a motor vehicle accident 12 years earlier and Petitioner's understanding that he had arthritis. Petitioner also reported that "*Pain always returns and recently recalled findings 12 years ago[;] Pain coming more frequently, every few days[;] truck driver, does a lot of sitting[;] Occasionally pain is severe enough where pt can not turn his torso side to side[;] Not sure what makes the pain worse....*" Id (emphasis added). After an examination, Dr. Patton noted that Petitioner's cervical, thoracolumbar, and lumbar spine showed no abnormalities and that his thoracic spine showed abnormalities "pin-point TTP [tenderness to palpation] at T3-4." Id. Dr. Patton diagnosed Petitioner with upper back pain and a backache. Id. She noted that it was a "likely progression of arthritis[.]" Petitioner did not report any right shoulder pain and no findings were made after a physical examination related to the right shoulder. In any event, the physical examination findings on this date are not reflective of the severity that Petitioner testified he felt pain on cross examination, which is further inconsistent with his testimony on direct and re-direct examinations.

Finally, the Arbitrator notes that Petitioner denied having any prior complaints regarding his neck, upper back or right shoulder on direct examination and only testified about this event which resulted in a right shoulder surgery and some, albeit minimal, neck complaints on cross examination.

Based on all of the foregoing, the Arbitrator finds that Petitioner failed to establish by a preponderance of credible evidence that he sustained a compensable injury at work on June 3, 2011 as claimed. Unless otherwise addressed herein, all other issues are rendered moot and all requested compensation and benefits are denied.

**In support of the Arbitrator's decision relating to Issue (M), whether penalties or fees should be imposed upon Respondent, the Arbitrator finds the following:**

Given the facts presented in this case, the Arbitrator finds that Respondent had a reasonable dispute as to whether Petitioner sustained a compensable injury at work on June 3, 2011 as claimed and whether his claimed condition of ill being was causally related to any such accident. Respondent's conduct was not unreasonable, vexatious and/or in bad faith. Thus, Petitioner's claim for penalties and fees under Sections 19(k), 19(l) or 16 of the Act is denied.

**In support of the Arbitrator's decision relating to Issue (O), credit/reimbursement to Respondent, the Arbitrator finds the following:**

As noted above, the Arbitrator finds that Petitioner failed to establish by a preponderance of credible evidence that he sustained a compensable injury at work on June 3, 2011 as claimed. The evidence reflects the parties' stipulation that Respondent paid \$60,606.93 in temporary total disability benefits to Petitioner. AX1. Respondent offered further evidence of payments made by Respondent to Petitioner's medical providers totaling \$81,158.39 and of payments made by Blue Cross/Blue Shield totaling \$2,924.00. RX1-RX2. No evidence to the contrary was produced at trial. Based on all of the foregoing, the Arbitrator finds that Respondent is entitled to a credit for these payments.

STATE OF ILLINOIS       )  
                                  ) SS.  
COUNTY OF COOK       )

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Anthony Berndt,  
  
Petitioner,

14IWCC0152

vs.

NO: 12 WC 10057

Hribar Trucking, Inc.,  
  
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 25, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0152

12 WC 10057

Page 2


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

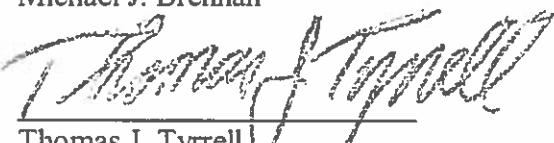
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$41,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 27 2014  
KWL/vf  
O-2/10/14  
42

  
Kevin W. Lamborn

  
Michael J. Brennan

  
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**14IWCC0152**

**BERNDT, ANTHONY**

Employee/Petitioner

Case# **12WC010057**

**HRIBAR TRUCKING INC**

Employer/Respondent

On 6/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0013 DUDLEY & LAKE LLC  
THOMAS LAKE  
325 N MILWAUKEE AVE SUITE 202  
LIBERTYVILLE, IL 60048

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD  
DANIEL R EGAN  
10 S RIVERSIDE PLZ SUITE 1530  
CHICAGO, IL 60606

STATE OF ILLINOIS )

)SS.

COUNTY OF Cook )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

19(b)

**14IWCC0152**

Case # 12 WC 010057

**Anthony Berndt**

Employee/Petitioner

v.

Consolidated cases: \_\_\_\_\_

**Hribar Trucking, Inc.**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Cook**, on **May 29, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_



**FINDINGS**

On the day of accident, 2/28/12, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$50,411.40**; the average weekly wage was **\$969.45**.

On the date of accident, Petitioner was **41** years of age, *married* with **1** dependent child.

Respondent *has in part* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$19,155.54** for TTD, **\$3,049.55** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$22,205.09**.

Respondent is entitled to a credit of **\$37,582.60** under Section 8(j) of the Act.

**ORDERS**

**Medical Expenses**

The Arbitrator awards Petitioner the following medical expenses, subject to the fee schedule and with Respondent receiving credit for any payments made toward said expenses, as reflected in RX 2: 1) Dr. Maiman/Medical College of Wisconsin, \$36,467.98; Froedtert Hospital, \$38,505.44; MCMC Radiology Services, \$1,352.00; and OccuCare, \$2,993.00.

**Temporary Total Disability**

See pages 12-13 of the attached conclusions of law for an explanation of the Arbitrator's temporary total disability award. With respect to the disputed period, October 15, 2012 through May 29, 2013 [with October 15, 2012 through December 23, 2012 involving a claimed underpayment], the Arbitrator awards a total of \$18,669.95 in benefits.

**Prospective Care**

The Arbitrator awards prospective care in the form of follow-up visits to Dr. Maiman and additional physical therapy as recommended by Dr. Maiman.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

14IWCC0152

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Molly E. Mason  
Signature of Arbitrator

6/25/13  
Date

ICArbDec19(b)

JUN 25 2013

Anthony Berndt v. Hribar Trucking, Inc.  
12 WC 10057

Arbitrator's Findings of Fact

The parties agree that Petitioner was injured on February 28, 2012 while working as a local deliveryman for Respondent. Arb Exh 1. Petitioner testified his job involved driving a semi from location to location, delivering and picking up ash and cement. He was required to climb stairs, pull and hook up hoses weighing 100 to 200 pounds and lift various items, with the heaviest being tires.

Petitioner testified he was in good health when he began working for Respondent on July 12, 2002. He denied having any neck problems or undergoing any neck treatment prior to his February 28, 2012 accident. Immediately prior to that accident, he was driving his work vehicle southbound on 294, near I-88, when traffic slowed. He brought his semi to a complete stop and was then rear-ended by another semi. He described the impact as forceful, referencing the photographs in Group PX 11. The semi that hit him pushed his 79,700-pound vehicle forward about a car length. He experienced stiffness in his neck, back and shoulders after the accident.

Petitioner testified he sought treatment on the day of the accident at Aurora Occupational. The brief treatment note from this facility sets forth a consistent account of the accident. Petitioner complained of a "brutal headache with neck and shoulder pain." Petitioner was referred to an Emergency Room. PX 6. No Emergency Room records are in evidence.

Petitioner testified he stayed home from work on February 29, 2012. On that day, he experienced numbness and tingling down his left arm into his fingertips. He had never experienced this sensation before. He resumed working on March 1, 2012 but experienced increased pain in his head, neck and shoulders while operating his semi. He sought treatment that day at United Occupational Medicine, where he saw Dr. Foster. The doctor's note sets forth a consistent account of the accident and subsequent care at Aurora Occupational. Petitioner reported that the impact was sufficient to cause the backside of his trailer to collapse. The doctor noted that Petitioner's symptoms increased that day after he resumed working and was "bouncing" in his truck. Petitioner complained of pain in his neck and "down triceps of L arm." He denied any previous injuries involving these areas.

Dr. Foster examined Petitioner and obtained cervical spine X-rays, which showed mild reversal of normal lordosis secondary to positioning or muscle spasm. The doctor diagnosed a cervical strain and possible radiculitis. He prescribed a short course of Prednisone. He noted that Petitioner was required to "handle hoses." He released Petitioner to light duty as of March 5, 2012, with no lifting over ten pounds and no commercial vehicle driving. PX 3.

Petitioner returned to Dr. Foster on March 7, 2012 and reported that his neck was "still very tight" and that he was occasionally experiencing mild headaches. On examination, Dr. Foster noted that Spurling's testing resulted in slight pain in the paracervicals. He noted that Petitioner expressed concern about being able to maneuver heavy 20-foot hoses at work. The doctor indicated he might require physical therapy. The doctor continued the previous work restrictions. PX 3.

On March 8, 2012, Petitioner called Dr. Foster's office and requested a muscle relaxant. The doctor prescribed Skelaxin. PX 3.

When Petitioner next saw Dr. Foster, on March 12, 2012, he denied improvement. He complained of pain in the back of his neck, increased by neck motion, occasional pain radiating down the back of his left arm and significant headaches. The doctor prescribed Celebrex and physical therapy. He continued the previous work restrictions. PX 3, 8.

Petitioner began a course of therapy at Sports Physical Therapy and Rehab Specialists on March 13, 2012. On that date, the evaluating therapist noted complaints of headaches and "neck pain with referred left UE pain." On examination, the therapist noted a positive Spurling's on the left "with referred pain into C7 distribution (5<sup>th</sup> finger/triceps)" and a "severe increase in cervical muscle tone bilaterally," left worse than right. PX 8.

Petitioner continued attending therapy thereafter. He testified the therapy caused his symptoms to worsen. On March 27, 2012, he returned to Dr. Foster and complained of a "very sore neck" and occasional headaches. The note reflects that Petitioner denied "radiation down arm" but pointed to a tender spot at C7. The doctor released Petitioner to light duty with no commercial vehicle driving. PX 3. On March 30, 2012, Petitioner's physical therapist noted overall improvement but continued localized pain with the "greatest pain along C7 to palpation." PX 8.

When Dr. Foster next saw Petitioner, on April 5, 2012, he described Petitioner as "difficult to assess" based on a lack of objective abnormalities. Due to Petitioner's "somewhat consistent" C7 complaints, however, he placed therapy on hold and prescribed a cervical spine MRI. PX 3. The MRI, performed at Kenosha Open MRI on April 16, 2012, demonstrated mild annular bulging of the C4-C5 disc with a "shallow focal disc protrusion midline and posteriorly effacing the spinal cord creating moderate vertebral canal stenosis without significant foraminal stenosis," a tiny focal disc protrusion at C5-C6 with mild effacement of the spinal cord creating moderate vertebral canal stenosis without significant foraminal stenosis, and annular bulging of the disc at C6-C7 "with broad-based protrusion midline and posteriorly creating mild to moderate vertebral canal stenosis without foraminal stenosis." PX 2.

On April 6, 2012, Petitioner called Dr. Foster's office and requested refills on his Skelaxin and Flexeril as well as pain medication for his headaches. The doctor prescribed Tramadol and Flexeril.

On April 9, 2012, Petitioner's physical therapist recommended that Petitioner undergo a cervical spine MRI due to "fluctuating progress" in therapy and Petitioner's concern about the level of his discomfort at C7. PX 8.

Petitioner returned to Dr. Foster on April 10, 2012. The doctor noted that Petitioner denied radicular symptoms but complained of tightness and occasional "massive" headaches. On examination, the doctor noted mild tenderness to palpation of C6-C7. He refilled the Skelaxin and made a notation concerning Dr. Didinski, a spine specialist. At the next visit, on April 17, 2012, Dr. Foster reviewed the MRI results and noted that Petitioner planned to see Dr. Maiman, a physician of his own choice, rather than Dr. Didinski. Dr. Foster recommended against surgery. He suggested that Petitioner undergo an epidural steroid injection. He broached the idea of Petitioner returning to his regular duties but held off after again noting that Petitioner was required to lift heavy hoses. Following a discussion with a case manager named "Jason," Dr. Foster imposed new restrictions: "may drive personal vehicle" and "can lift up to 15 pounds." PX 3.

On April 26, 2012, Petitioner saw Dr. Maiman, a neurosurgeon affiliated with the Medical College of Wisconsin/Froedtert Hospital. PX 1, p. 5. The doctor's initial note reflects that Petitioner experienced an immediate onset of largely left-sided neck pain, associated with headaches and pain in the trapezius, after being rear-ended by a semi on February 28, 2012. The doctor also noted a complaint of "occasional painful paresthesias going into the left arm." He indicated that Petitioner denied right arm and lower extremity complaints. He also indicated that Petitioner denied any previous history of significant spinal problems.

Dr. Maiman advised Petitioner to stop smoking.

On examination, Dr. Maiman noted a decreased cervical range of motion to the left "with severe paravertebral spasm throughout his neck and up into the trapezius musculature." Flexion was normal but extension was "limited to about 15 degrees, also with a severe paravertebral spasm." Motor and sensory examinations were normal. Left triceps jerk was decreased.

Dr. Maiman reviewed the MRI. He expressed concern with the largely passive nature of the therapy performed to date. He requested the therapy records and prescribed flexion-extension cervical spine X-rays. Those X-rays, performed the same day, showed no abnormalities. PX 7.

At Dr. Maiman's recommendation, Petitioner resumed therapy at Sports Physical Therapy & Rehab Specialists on May 8, 2012. By July 2, 2012, he had attended thirty-six sessions and was demonstrating the ability to perform within a light physical demand level. His therapist described his truck driver occupation as within the heavy physical demand level. PX 8.

Petitioner returned to Dr. Maiman on July 5, 2012. At that visit, the doctor described Petitioner as "clearly improved" but continuing to experience a fair amount of pain. On

examination, the doctor noted a near-full range of cervical spine motion but with mild paravertebral tenderness. He described his neurologic examination as unremarkable. He released Petitioner to light duty and instructed him to continue attending therapy. He noted that Petitioner expressed some concern about being able to pass a DOT exam. He released Petitioner to light duty with no lifting over 20 pounds, no repetitive bending/twisting and no overhead work. PX 7.

Petitioner continued attending therapy thereafter. In mid-July 2012, his therapist noted increased symptoms secondary to simulated work activity, "hose stacking," during therapy. The therapist asked Dr. Maiman to prescribe a home cervical traction unit. PX 8. On July 25, 2012, Petitioner reported that he was resuming light duty six hours per day. On July 27, 2012, Petitioner reported that his neck was "really sore from going back to work for office work, due to prolonged looking toward and cervical rotation with paperwork." On August 15, 2012, the therapist sent a re-evaluation note to Dr. Maiman indicated Petitioner had regressed during the preceding three to four weeks. PX 8.

On August 16, 2012, Petitioner returned to Dr. Maiman, with the doctor recording the following history:

"Mr. Berndt came in today for follow-up of his cervical radiculopathy. In the interim, the therapist describes him as having deteriorated. He has been having increased pain, and increasing difficulties doing his exercise program, although he continues to do most of it. He denies any new trauma or other neurological abnormalities."

On examination, Dr. Maiman noted a decreased range of motion to the left with moderate paravertebral tenderness. He stated: "it appears to me that he does have some decreased sensation in the C7 distribution which is a new phenomenon." He recommended a cervical spine CT scan, noting that the previous MRI "does not define the foramen adequately." He put therapy on hold, continued the previous work restrictions and prescribed Vicodin for pain. PX 1.

Petitioner underwent the recommended CT scan at MCMC Radiology Services on August 27, 2012. The radiologist interpreted the scan as showing straightening of the cervical spine, indicating spasm, and a "mild posterior bulge of the C6-C7 disc abutting the thecal sac without evidence of central canal or neuroforaminal stenosis." PX 5.

On October 5, 2012, Dr. Maiman administered a left C6-7 transforaminal injection at Froedtert Hospital. PX 4. Soriano Dep Exh 2. Petitioner testified that this procedure did not relieve his symptoms. By the time he underwent this procedure, he was experiencing symptoms in both arms.

On October 10, 2012, a placement coordinator affiliated with an entity called "ReEmployAbility, Inc." sent a letter to Petitioner's counsel referencing Petitioner's work

restrictions and indicating that a transitional full-time job as a thrift store sales assistant had been located for Petitioner. In the letter, the coordinator indicated that Petitioner would be paid \$16.00 per hour while working in the thrift store. The coordinator referred to the transitional job as an "extension" of Petitioner's employment by Respondent. The coordinator indicated Petitioner would have to meet with Jon Bender on October 17, 2012 and begin working at the thrift store the following Monday, October 22<sup>nd</sup>. RX 3.

On October 18, 2012, Petitioner saw Dr. Maiman again, with the doctor recommending a single level procedure at C6-C7. The doctor discussed two options with Petitioner: "artificial disc versus an ACDF with iliac crest bone." He informed Petitioner he would have to be nicotine free for at least three weeks prior to surgery. He released Petitioner to light duty with "no repetitive looking up or down."

At Respondent's request, Petitioner saw Dr. Soriano, a neurosurgeon, for a Section 12 examination on December 17, 2012. The doctor's report (Soriano Dep Exh 2) sets forth a consistent account of the accident of February 28, 2012. The report reflects that Petitioner was "pitched forward quite hard" at impact, with his hat flying off and his Bluetooth coming out of his ear. Dr. Soriano noted that the cab of Petitioner's semi was operable after the collision and that Petitioner drove the cab sixty miles back to Caledonia, Wisconsin.

Dr. Soriano noted that Petitioner complained of headaches, numbness and tingling in his arms and fourth and fifth fingers, shoulder pain and spasms down to his toes. He also noted that Petitioner was currently taking Flexeril and Vicodin, as well as Percocet for "really bad pain."

Dr. Soriano interpreted the August 27, 2012 CT scan as showing a "broad spur with calcification slightly towards the left foramen but without significant compression."

Dr. Soriano indicated he reviewed a First Report of Injury, records from United Occupational Medicine, an initial therapy evaluation and Dr. Maiman's records.

On examination, Dr. Soriano noted a normal gait, 5/5 strength in all motor groups of the hands and upper extremities, symmetrical reflexes at the biceps, triceps and brachioradialis, negative Tinel's signs at the elbows and wrists, a normal range of neck and shoulder motion, and no point tenderness or spasm in the neck, shoulders or arms.

Dr. Soriano opined that the rear-end collision of February 28, 2012 resulted in a cervical strain. He found no causal relationship between the collision and Petitioner's continued complaints of neck and trapezius pain. He described the MRI and CT findings as "consistent with mild degenerative changes at multiple levels" with "no evidence of neuroforaminal narrowing" and "no evidence of any acute aggravation or acute findings related to the accident." He described Petitioner's complaints as "bilateral in a non-dermatomal distribution and somewhat exaggerated."

Dr. Soriano found Petitioner to be at maximum medical improvement and capable of full duty. He described Dr. Maiman's surgical recommendation as "difficult to justify, at best." He indicated that Dr. Maiman was the only provider to have made a "very soft neurological finding," i.e., apparent decreased sensation in the C7 distribution. Soriano Dep Exh 2.

The parties agree that Respondent stopped paying workers' compensation benefits as of December 23, 2012. Arb Exh 1. PX 9. Petitioner testified he received benefits in the amount of about \$218.00 per week from October 23, 2012 through December 23, 2012.

Petitioner testified that, in late December, after Dr. Soriano found him capable of full duty, he contacted Respondent's human resources representative about resuming employment. The representative instructed him to undergo a new DOT examination. He underwent this examination on January 5, 2013. The examining physician disqualified him due to his use of narcotic pain medication and the need for clearance from Dr. Maiman.

Petitioner returned to Dr. Maiman on February 7, 2013. The doctor noted Petitioner had resumed smoking because his workers' compensation benefits had been terminated and he did not have money to pay for the anti-smoking medication he had been taking. Dr. Maiman recommended that Petitioner contact him as soon as he was completely nicotine-free so that the surgery could be scheduled with Petitioner's group carrier. Petitioner testified he quit smoking "cold turkey" so that he could undergo the surgery and get back to work. With reference to the "negative IME," Dr. Maiman addressed causation as follows: "note that I have said previously, and continue to assert, that [Petitioner] has a herniated disc in the cervical spine which is directly related to the work injury in question. There is absolutely no reason to think otherwise and all evidence is very clear." PX 7.

On March 21, 2013, Dr. Maiman performed an anterior cervical decompression, fusion and stabilization at C6-7, using an ACF spacer and a 14-mm plate. The surgery took place at Froedtert Memorial Lutheran Hospital. PX 4, 7. Petitioner testified that, by the time the surgery took place, he was experiencing pain with any movement of his head.

On April 11, 2013, Dr. Maiman gave a deposition on behalf of Petitioner. PX 1. Dr. Maiman testified he obtained board certification in neurosurgery in 1985. He currently practices at the Medical College of Wisconsin, where he is Sanford J. Larson distinguished professor and chairman of the department of neurosurgery. PX 1 at 5. He performs 350 to 400 spine surgeries annually. About 40% of these surgeries involve the cervical spine. PX 1 at 6. He routinely interprets MRI and CT scans. PX 1 at 6.

Dr. Maiman testified he has an independent recollection of Petitioner. PX 1 at 6. He identified Maiman Dep Exh 2 as a copy of his outpatient notes concerning Petitioner. PX 1 at 7. He first saw Petitioner on April 26, 2012, at the referral of Dr. Jeranek, Petitioner's personal care physician. PX 1 at 8. Petitioner related that he was rear-ended by a semi on February 28, 2012. PX 1 at 8-9.



Dr. Maiman testified his initial examination findings of a significantly reduced range of motion and "a lot of neck spasm" into the back of the neck and trapezius were "consistent with muscle injury" in Petitioner's neck. PX 1 at 9. Petitioner's MRI, which he personally reviewed, showed three-level disc bulging, with the bulge at C6-7 "more prominent" and "in the midline, heading over to the nerve going to the left arm." PX 1 at 10-11. The MRI findings correlated with the examination findings. PX 1 at 11. Petitioner denied having any pre-existing cervical spine problems. PX 1 at 12.

Dr. Maiman testified he diagnosed a cervical radiculopathy, i.e., "irritation of the nerve root of the C6-7 nerve." Based on the history and examination, he opined that this condition stemmed from the motor vehicle accident. PX 1 at 12-13. He recommended therapy. Petitioner subsequently reported improvement. On July 5, 2012, he released Petitioner to light duty and told him to continue therapy. PX 1 at 14. As of August 16, 2012, however, Petitioner had deteriorated, per his physical therapist, and was "not doing well." Petitioner was experiencing numbness down his arm that he had not previously complained of. The numbness involved the same nerve, i.e., the C7 nerve root, that Petitioner had previously complained of. PX 1 at 16. Petitioner's condition as of August 16, 2012 was a "continuation of the same injury." PX 1 at 17. He obtained a CT scan because he needed to understand why Petitioner had gotten worse. The MRI showed a disc and foraminal narrowing but the narrowing was not catastrophic. He ordered a CT scan because MRIs do a "lousy job of bone definition." The CT scan was consistent with the MRI. It confirmed that there was disc bulging and compression of the C7 nerve. PX 1 at 19. The motor vehicle accident was a "principal factor" in this compression. PX 1 at 19-20. He held off on recommending surgery to see whether therapy would help. Petitioner did therapy faithfully for several months. Petitioner "got worse in spite of that and maybe, in part, because of it." PX 1 at 21-22. The need for the therapy stemmed from the motor vehicle accident. PX 1 at 22. He discussed surgery with Petitioner and presented him with two alternatives. Petitioner could either undergo an anteriorcervical fusion or an artificial disc replacement. He told Petitioner that surgery was "not absolutely necessary in the sense that he was going to be paralyzed if he didn't have it" but he also told Petitioner his pain was not likely to improve without surgery. PX 1 at 23.

Postoperatively, Petitioner returned to Dr. Maiman on April 18, 2013. The doctor indicated Petitioner was "not doing as well as expected" in that he was complaining of trembling in his left hand as well as neck pain. On examination, the doctor noted a full cervical range of motion with minimal tenderness. Cervical spine X-rays showed good positioning of the fixation device and early incorporation of bone. The doctor refilled Petitioner's Flexeril and Percocet and noted that Petitioner was going to be starting therapy. PX 7.

Petitioner began a course of therapy at Accelerated Rehabilitation on April 18, 2013. The last therapy note in evidence is dated May 21, 2013. PX 8.

On May 28, 2013, Dr. Maiman's assistant, Steve Kisch, PA-C, issued a note indicating that Petitioner remained under Dr. Maiman's care and was to remain off work "until at least 6/20/13." PX 10.

Petitioner testified he is scheduled to undergo additional therapy, per Dr. Maiman. He wants to undergo this therapy. The surgery helped quite a bit in terms of his arm symptoms. He still has pain at the back of his neck as well as at the incision site but the pain is more localized than it was preoperatively. He feels he is continuing to improve. His current medications include Percocet and Cyclobenzepine, a muscle relaxant. He started taking Percocet in December of 2012. He began taking Cyclobenzepine in April of 2012. He is scheduled to return to Dr. Maiman on June 20, 2013. He is not sure when he will be released to work. Dr. Maiman has had him off work since the surgery. He wants to return to work for Respondent but has to pass a DOT examination in order to be able to do so.

Under cross-examination, Petitioner testified his truck was not equipped with airbags. At impact, his head bounced off the head rest behind him. He did not undergo any treatment at the scene of the accident. After the accident, he was able to drive back to Wisconsin. Between April and May of 2012, he performed light duty at Respondent. The light duty consisted of inventory work in Respondent's warehouse. He had to count batteries as part of this work. He was required to look down at times but, for the most part, the work was at eye level. While he was subject to restrictions per Dr. Maiman, Respondent offered him restricted work, through an entity called "Re-EmployAbility." At the point at which Respondent extended this offer, the work was within Dr. Maiman's restrictions. Petitioner testified he met with Jon Bender, the manager of the store where he was supposed to work, and told Bender he was seeing Dr. Maiman the following day. When he saw Dr. Maiman, the doctor added a work restriction, indicating he needed to keep his head in a neutral position. Petitioner testified he advised Bender of this added restriction, with Bender indicating he would have to check with human resources.

On redirect, Petitioner testified that, the week after Dr. Maiman added the work restriction, he contacted Bender again but never received an offer of employment from "Re-EmployAbility." Nor did he receive an offer of accommodated duty from Respondent. Dr. Soriano spent about an hour with him.

Respondent offered into evidence Dr. Soriano's deposition of May 21, 2013. Dr. Soriano became "board eligible" in neurosurgery in 1987. He achieved board certification in 1992. Soriano Dep Exh 1. He now concentrates on disorders of the spine and peripheral nerves. He stopped performing brain surgery about six years ago. RX 1 at 7. He devotes less than 20% of his practice to medical-legal work. He conducted 123 independent medical examinations in 2012 and 122 in 2011. RX 1 at 7. When he examined Petitioner, in December of 2012, Dr. Maiman was recommending a fusion at C6-7. RX 1 at 11. As of the examination, Petitioner was taking Flexeril and Vicodin. Petitioner complained of pain in his neck, mid-back and lower back as well as headaches and numbness/tingling in his arms and ring and small fingers. Petitioner indicated he was able to drive but spent most of his time reading or watching television. RX 1 at 12.

Dr. Soriano testified he reviewed treatment records and radiographic studies, including cervical X-rays and a cervical CT scan. RX 1 at 13. He reviewed an MRI report but not the actual MRI scan. RX 1 at 14. The CT scan showed a spur, or calcification, at C6-7, slightly to the left side of the disc. The spur was not causing any nerve root or spinal canal compression. RX 1 at 14-15. It takes at least a year or two for such a calcification to develop. A calcification develops in response to a bulging disc. RX 1 at 16. The MRI report documented a protruding or bulging disc at C6-7. The MRI was consistent with the CT scan. RX 1 at 15-16. There was no evidence of trauma in either the CT or the MRI. Both were consistent with "long-standing multi-level degenerative discs consistent with a 42-year-old spine." RX 1 at 17-18.

Dr. Soriano testified that Petitioner exhibited a normal gait and did not appear to be in distress. RX 1 at 13. Dr. Soriano described his examination of Petitioner as "completely normal." RX 1 at 14.

Dr. Soriano testified there were no objective findings to correlate with Petitioner's headaches or numbness/tingling. The tingling was into the ring and small fingers. "That would be the disc level associated with the C7-T1 disc" whereas the protrusion is at C6-C7. RX 1 at 18.

Dr. Soriano opined that the motor vehicle collision resulted in soft tissue whiplash-type injuries. He viewed Petitioner's initial symptoms as related to the collision. RX 1 at 19, 22. Petitioner's current symptoms, however, are non-anatomical and unrelated to the accident. RX 1 at 19-20.

Dr. Soriano testified that Petitioner "ha[s] a mild degree of central stenosis because of the breakdown of his discs from C3-C4 to C4-C5 to C5-C6 and at C6-C7." The terms "stenosis" is relative, however, because, in Petitioner's case, "it just means there is arthritis taking up some of the space where his spinal cord should be." RX 1 at 21. Petitioner has no evidence of foraminal stenosis. RX 1 at 21.

Dr. Soriano opined that Petitioner had reached maximum medical improvement as of the December 2012 examination. RX 1 at 22. He did not believe that Petitioner required surgery. He testified there is "no standard of care that would recommend surgery" to a person who has numerous complaints that are not reproducible or objective in nature. RX 1 at 23. Petitioner's complaints extend all the way to his feet and are clearly unrelated to the C6-C7 disc. RX 1 at 24.

Dr. Soriano testified that Petitioner is capable of driving a car and performing full duty. Petitioner has no neurological or mechanical deficits. RX 1 at 24. Petitioner exhibited a full range of neck motion and is thus capable of driving a truck. RX 1 at 24-25.

Under cross-examination, Dr. Soriano testified he charged \$950 per examination and \$1100 per hour for deposition time as of December 2012. RX 1 at 25. Of the independent examinations he performed in 2012, over 95% were for defendants. RX 1 at 25-26. He recalls some of Petitioner's history but, if he did not have Petitioner's picture available in his chart, he

would not be able to recall what Petitioner looked like. RX 1 at 26. He has offices in several locations. He currently has privileges at a surgi-center and at the following hospitals: St. Anthony's, Swedish American and Rockford Memorial. RX 1 at 26-27. He probably performed 25 to 30 cervical surgeries per year during the last several years. RX 1 at 27. He is familiar with an "anterior cervical approach" fusion. He spent about 5 to 10 minutes actually examining Petitioner. RX 1 at 28. Petitioner did not relate any history of pre-existing cervical problems. Petitioner's records do not reveal any such history. RX 1 at 28. It is his belief that Petitioner's cervical spine was asymptomatic prior to the accident. RX 1 at 28. Petitioner described his duties but he did not receive a formal written description of those duties. RX 1 at 28-29. He has not reviewed the operative report or any treatment records post-dating October 18, 2012. RX 1 at 29. He did not review the MRI films. He may have asked to see these films. It is his practice to review his patients' MRI films. RX 1 at 30-31. He believes Petitioner injured the soft tissues of his neck, not his cervical spine. RX 1 at 31. The family doctor's visits, the radiographic studies and the attempts at therapy and medication were reasonable and necessary. RX 1 at 31-32. It was reasonable for Petitioner to be restricted, work-wise, early on in March. Petitioner related bilateral complaints. RX 1 at 32. Dr. Maiman stated that it "seemed" to him that Petitioner had some decreased sensation in the C7 distribution. Dr. Soriano testified that using the phrase "it seems to me" is not a good way to word a medical finding. RX 1 at 34. He personally did not document decreased sensation when he examined Petitioner in December of 2012. RX 1 at 35. Since he has not seen Petitioner recently, he cannot comment on Petitioner's current condition or ability to work. RX 1 at 35. Petitioner did exhibit disc pathology. The pathology was a pre-existing bulging degenerative disc at C6-C7 that had already become calcified. That is consistent with the normal aging process. RX 1 at 36. The accident did not accelerate the degenerative process. RX 1 at 36-37. What is key is that Petitioner had a disc bulge, not a disc herniation. RX 1 at 37.

On redirect, Dr. Soriano testified that Petitioner does not require any lifting-related restrictions, based on his normal examination. RX 1 at 38. If the accident had aggravated Petitioner's disc pathology, the CT and MRI would have shown this. "No acute findings were even minimally suggested on the MRI scan." RX 1 at 39.

Under re-cross, Dr. Soriano testified he has no opinion as to whether Petitioner would be expected to improve, symptom-wise, following a cervical fusion. RX 1 at 39-40.

#### **Arbitrator's Credibility Assessment**

Dr. Foster described Petitioner as "difficult to assess" at one point but did not note any symptom magnification. Respondent's examiner, Dr. Soriano, described Petitioner's symptoms as non-anatomical but acknowledged that Petitioner exhibited disc pathology. Dr. Maiman, who has treated Petitioner over an extended period, did not note any inconsistencies.

Overall, the Arbitrator found Petitioner credible.

**Did Petitioner establish a causal connection between his undisputed work accident and his current condition of ill-being?**

The Arbitrator finds that Petitioner met his burden of proof on the issue of causal connection. Specifically, the Arbitrator finds that the undisputed work accident of February 28, 2012, in combination with subsequent flare-ups associated with attempts to resume working, led to the need for the cervical spine surgery that Dr. Maiman performed on March 21, 2013. In so finding, the Arbitrator relies on the following:

- Petitioner's credible account of the force associated with the collision of February 28, 2012
- Petitioner's credible denial of neck problems prior to the collision
- The lengthy duration of Petitioner's pre-accident employment by Respondent, with that employment involving the manipulation of heavy hoses
- Petitioner's credible testimony that he experienced numbness and tingling in his left arm the day after the accident
- The therapy notes of March 13, 2012 documenting a positive Spurling's and complaints in a C7 distribution
- Dr. Foster's documentation of a tender spot at C7 and subsequent referral to a spine surgeon
- The absence of any evidence of a specific re-injury after February 28, 2012
- Dr. Maiman's causation-related opinions

The Arbitrator finds Dr. Maiman more persuasive than Dr. Soriano. Dr. Maiman achieved board certification in neurosurgery in 1985. He is chairman of the department of neurosurgery at the Medical College of Wisconsin/Froedtert Hospital. PX 1, p. 5. He performs about 350 to 400 spinal surgeries annually. About 40% of these surgeries involve the cervical spine. PX 1, p. 6. Dr. Soriano, while also board certified in neurosurgery, performs only about 25 to 30 cervical spine surgeries annually. He devotes a portion of his practice to independent medical examinations, the vast majority of which are for defendants. Dr. Maiman treated Petitioner over an extended period while Dr. Soriano examined Petitioner once, with that examination lasting five to ten minutes. Under cross-examination, Dr. Soriano made two important concessions: Petitioner has disc pathology and was asymptomatic before the accident.

**Is Petitioner entitled to reasonable and necessary medical expenses?**

Petitioner seeks an award of medical expenses stemming from treatment provided by Dr. Maiman/Medical College of Wisconsin (\$36,467.98), Froedtert Hospital (various charges from October 5, 2012 and March 2013 totaling \$38,505.44), MCMC Radiology Services (CT scan, 8/27/12, \$1,352.00) and OccuCare (\$2,993.00 for post-operative therapy performed in 2013). PX 4-5, 7-8. Respondent offered into evidence a print-out of payments its workers' compensation carrier made to Petitioner and various providers, including the Medical College of Wisconsin and Froedtert Hospital. RX 2. The Arbitrator has reviewed both the bills and the print-out. It appears that many of Dr. Maiman's charges, as well as the October 5, 2012 bill

from Froedtert Hospital, were in fact paid by the workers' compensation carrier. The parties agree that other medical expenses were paid by the group carrier. Arb Exh 1.

Having found that Petitioner established causation, and noting Dr. Maiman's testimony as to the need for the surgery and Petitioner's testimony as to his post-operative improvement, the Arbitrator awards the medical expenses claimed by Petitioner, subject to the fee schedule, with the understanding Petitioner is not entitled to a double recovery and that Respondent is entitled to credit for any payments reflected on RX 2.

**Is Petitioner entitled to temporary total disability benefits? Is Petitioner entitled to temporary partial disability benefits?**

At the hearing, Petitioner claimed two intervals of temporary total disability: March 1, 2012 through April 18, 2012 and May 7, 2012 through May 29, 2013, the date of hearing. Respondent stipulated to the first claimed period and to a second period running from May 7, 2012 through October 14, 2012. Respondent claimed Petitioner was entitled to temporary partial disability benefits from April 19, 2012 through May 6, 2012 and from October 15, 2012 through December 23, 2012. The parties agreed that Respondent paid \$22,205.09 in benefits (including \$19,155.54 in temporary total disability and \$3,049.55 in temporary partial disability) prior to the hearing. They also agreed that the disputed temporary total disability benefits totaled \$18,669.95. Arb Exh 1.

Respondent's claim that Petitioner is entitled only to temporary partial disability benefits from October 15, 2012 through December 23, 2012 is premised on its argument that Petitioner failed to pursue an offer of alternative light duty as a thrift store sales associate through an entity known as "ReEmployAbility." That offer is further described in RX 3. Petitioner testified he presented to Jon Bender, the store manager, as required by Respondent, and made Bender aware he was returning to Dr. Maiman the following day. At the return visit, Dr. Maiman imposed an additional work restriction. Petitioner testified he promptly notified Bender of this restriction and followed up with Bender the following week but did not hear anything further from either Bender or Respondent. Respondent did not call any witness to refute Petitioner's testimony on these points. Records in evidence reflect that Respondent paid Petitioner \$219.63 per week for ten weeks prior to December 23, 2012, at which point Respondent stopped paying benefits in reliance on Dr. Soriano.

The Arbitrator has elected to rely on Dr. Maiman rather than Dr. Soriano with respect to the issues of causation and work capacity. The Arbitrator finds that Petitioner acted in good faith in pursuing the possibility of a transitional light duty job with an entity other than Respondent. Petitioner continued to pursue this possibility even after Dr. Maiman imposed an additional work restriction on October 18, 2012. There is no evidence indicating that ReEmployAbility and/or Respondent offered work within Dr. Maiman's revised restrictions after October 18, 2012. Dr. Maiman continued to actively treat Petitioner after October 18, 2012.

At the hearing, the parties agreed that the amount of disputed temporary total disability (including the claimed \$4,266.70 underpayment for the ten-week period preceding December 23, 2012) equals \$18,669.95. Arb Exh 1. The Arbitrator finds that Petitioner's condition remained unstable and that he was temporarily totally disabled from October 15, 2012 through the hearing of May 29, 2013. The Arbitrator awards Petitioner \$18,669.95 in temporary total disability benefits based on the parties' agreement and calculations.

**Is Petitioner entitled to prospective care?**

As of the hearing, Petitioner was continuing to undergo post-operative physical therapy per Dr. Maiman. Having found that Petitioner established causation vis-à-vis the surgery, and having elected to rely on Dr. Maiman, the Arbitrator awards prospective care in the form of follow-up visits to Dr. Maiman and additional physical therapy as recommended by the doctor.





STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0153

Carlos Torres,

Petitioner,

vs.

NO: 11 WC 15089

Integrated Industries,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 11, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

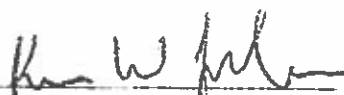
14IWCC0153

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$27,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 27 2014  
KWL/vf  
O-2/11/14  
42

  
Kevin W. Lamborn

  
Thomas J. Tyrrell

  
Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**14IWCC0153**

**TORRES, CARLOS**

Employee/Petitioner

Case# **11WC015089**

**INTEGRATED INDUSTRIES**

Employer/Respondent

On 2/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0815 LUIS A ACEVES & ASSOC PC  
EMILIANO PEREZ JR  
33 N DEARBORN ST SUITE 2201  
CHICAGO, IL 60602

1153 MARTIN, PATRICK W  
203 N LASALLE ST  
SUITE 2100  
CHICAGO, IL 60601

STATE OF ILLINOIS )

)SS.

COUNTY OF Cook )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

19(b)

**14IWCC0153**

**Carlos Torres,**

Employee/Petitioner

Case # 11 WC 15089

v.

Consolidated cases: \_\_\_\_\_

**Integrated Industries**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **01/22/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

14IWCC0153

FINDINGS

On the date of accident, **03/11/11**, Respondent *was* operating under and subject to the provisions of the Act.  
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.  
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.  
Timely notice of this accident *was* given to Respondent.  
Petitioner's current condition of ill-being *is* causally related to the accident.  
In the year preceding the injury, Petitioner earned **\$31,200.00**; the average weekly wage was **\$600.00**.  
On the date of accident, Petitioner was **22** years of age, *single* with **0** dependent children.  
Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.  
Respondent shall be given a credit of **\$6,140.00** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$6,140.00**.  
Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$400.00/week for 73 1/7 weeks, commencing August 30, 2011 through January 22, 2013, as provided in Section 8(b) of the Act, with Respondent receiving credit for the \$6,140.00 in benefits it paid prior to arbitration.  
Respondent shall pay reasonable and necessary medical services of \$4,479.35, as provided in Sections 8(a) and 8.2 of the Act. PX 5A, 7A.  
Respondent shall authorize and pay for prospective care in the form of the CT discogram recommended by Dr. Bergin.  
For the reasons set forth in the attached conclusions of law, the Arbitrator declines to award penalties and fees in this claim.  
In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

2/11/13  
Date

14IWCC0153

Arbitrator's Findings of Fact

Petitioner, who is 24 years old, testified through a Spanish-speaking interpreter. He recalled working for Respondent for a year before his undisputed work accident of March 11, 2011. T. 14. He worked as a mechanic, changing tires and brakes on trailer chassis. T. 14. It was typical for him to change tires every day, sometimes five to ten times during the course of a day. A truck tire, including the rim, weighs about 120 pounds. T. 14.

Petitioner denied having any lower back pain or undergoing any lower back treatment prior to March 11, 2011. T. 29.

On March 11, 2011, Petitioner was working alone (T. 15-16), changing the brakes on a truck chassis. Because no lifting apparatus other than a jack was available, he had to "take out both tires with the rim simultaneously." T. 14-15. The tires and rim started falling toward him. He put his right foot back and tried to brace the tires and rim with his body weight so that they would not fall on his feet. He "made [this] effort just from [his] waist upwards." As he did this, he felt an immediate onset of pain in the center of his lower back. T. 16. He also felt pain radiating up to his neck. T. 17. He resumed working. About half an hour later, he started experiencing pain radiating down his legs. T. 17. He reported the injury to his supervisor that day. T. 17. [Notice is not in dispute.] At Respondent's direction, he went to the Clearing Clinic, which is part of MacNeal Hospital. T. 18.

Petitioner testified he saw a female physician at the Clearing Clinic on March 11, 2011. This physician lifted his shirt, looked at his back and asked where his pain was. She then gave him pain medication and released him to light duty. T. 18-19.

The Clearing Clinic records reflect that Petitioner saw Dr. Ellen Fertelmeister on March 11, 2011. The doctor noted that Petitioner injured his back while changing the brakes on a trailer. Petitioner complained of constant 5/10 lower back pain since that afternoon. Dr. Fertelmeister noted negative straight leg raising bilaterally. She also noted muscle spasm in the left paraspinal muscles and pain with movement of the cervical spine. Spurling's was negative. She obtained X-rays of the lumbar and cervical spine. The preliminary reading was negative. She diagnosed lumbar and cervical strains and indicated these conditions were "probably related to work activities." She prescribed a Medrol Dose Pak and Cyclobenzaprine. She released Petitioner to light duty with no twisting, no lifting over 20 pounds and bending up to 20 minutes per hour. PX 1. T. 19.

Petitioner testified he returned to work after leaving the clinic. He presented his restrictions to his boss but told his boss he could not resume working that day due to the severity of his pain. He returned to work the following day. T. 20. He testified that Respondent did not accommodate the restrictions. Instead, Respondent wanted him to continue his usual

heavy mechanic duties. A few days later, Respondent sent Petitioner home because his restrictions could not be accommodated. T. 21. Respondent called Petitioner back to work a few days after sending him home but again failed to provide him with accommodated duty. T. 21.

Petitioner returned to the Clearing Clinic on March 15, 2011. T. 21. On this occasion, Petitioner saw Dr. Ali. Petitioner complained to the doctor of constant, 7/10 lower back pain, "made worse by lifting, twisting and bending." He also complained of neck numbness and pain radiating to his legs. He indicated that the Medrol Dose Pak did not help. On examination, Dr. Ali noted a limited range of lumbar motion, negative straight leg raising bilaterally, tenderness to palpation of the cervical spine and a negative Spurling's maneuver. Dr. Ali diagnosed lumbar and cervical strains. He prescribed Skelaxin and physical therapy. He continued the previous work restrictions. PX 1. T. 21.

Petitioner underwent an initial physical therapy evaluation on March 21, 2011. The therapist noted complaints of 6-7/10 lower back pain and radicular symptoms in both legs. She also noted that Petitioner denied any significant past medical history. Due to some communication difficulties, she scheduled Petitioner to see a Spanish-speaking therapist. PX 1, p. 14.

Petitioner went back to the Clearing Clinic on March 22, 2011 and again saw Dr. Fertelmeister. Petitioner indicated his pain was worsening in severity. Dr. Fertelmeister noted that Petitioner was unable to squat and that straight leg raising was positive bilaterally. She prescribed Meloxicam and a lumbar spine MRI. She continued the previous work restrictions. PX 1, p. 9. T. 22.

On March 28, 2011, Angelica Diaz, a therapy assistant, noted that Petitioner complained of lower back and bilateral leg pain and was unable to tolerate many exercises. PX 1, p. 16.

On March 30, 2011, Petitioner underwent the recommended lumbar spine MRI at American MRI. The interpreting radiologist noted mild disc bulges at L3-L4, L5-L5 and L5-S1 "with associated slight neural foraminal narrowing at these levels." The radiologist indicated that the bulging disc at L4-L5 encroached on the exiting left L4 nerve root in the left neural foramen. He described Petitioner's central lumbar canal as "developmentally small in caliber" with "no superimposed acquired central canal stenosis." PX 2. RX 1.

The following day, Dr. Fertelmeister discussed the MRI results with Petitioner. She prescribed Tramadol and recommended a neurosurgical consultation. PX 1, pp. 21-22. She scheduled Petitioner to see Dr. Zelby. PX 1, p. 26. T. 22.

Petitioner saw Dr. Zelby on April 11, 2011, as scheduled. T. 23. Dr. Zelby is a board certified neurosurgeon. PX 3, p. 1. Dr. Zelby obtained a history of Petitioner's work accident and subsequent treatment. He noted complaints of pain in the lower back, posterior left leg

and posterior right thigh. He also noted that Petitioner complained of leg numbness and weakness. Petitioner denied any prior history of similar symptoms.

On examination, Dr. Zelby noted that sensation to pin was diminished in the anterior left thigh. He also noted inconsistent behavioral responses positive for pain on superficial light touch, pain on simulation and diminished pain on distraction.

Petitioner testified he was not sure whether Dr. Zelby had his MRI film available. T. 23. In his report, Dr. Zelby interpreted the MRI as showing degenerative disc disease at L5-S1, a "persistent S1-S2 disc" and a "broad-based and right disc protrusion at L5-S1" effacing the right S1 nerve root with no compression on the left S1 nerve root.

Dr. Zelby indicated that Petitioner "has back pain from his lumbar degenerative disc disease" as well as left leg pain. Because the MRI showed that the L5-S1 disc herniation was "more to the right," Dr. Zelby recommended an EMG to determine the source of the left leg pain. He commented that Petitioner would need a series of epidural injections if the EMG showed a clear radiculopathy and four weeks of work conditioning if it did not. He continued the previous work restrictions. PX 3, p. 4.

On April 15, 2011, Petitioner returned to the Clearing Clinic and saw Dr. Sorokin. The doctor noted Dr. Zelby's recommendations and ordered the EMG. He instructed Petitioner to continue taking Meloxicam, Skelaxin and Tramadol. He released Petitioner to restricted duty with no lifting over 20 pounds, bending up to 20 minutes per hour and no twisting. He indicated that Petitioner's symptoms were "probably related to work activities." PX 1.

Subsequent Clearing Clinic records reflect that Petitioner did not undergo the EMG.

On May 10, 2011, Petitioner saw Dr. Bergin, a physician of his own selection. Dr. Bergin is associated with Orthopaedic Surgery Specialists.

Dr. Bergin's note reflects that Petitioner was injured on March 11, 2011 while fixing brakes when he "tried to catch a tire and fell to the ground onto the right knee." Dr. Bergin indicated that Petitioner denied any previous back injury or treatment. He noted complaints of low back pain radiating to the right buttock and posterior thigh and occasionally into the calf.

Dr. Bergin noted that Petitioner "has been working full duty and is quite miserable."

On examination, Dr. Bergin noted some moderate lumbar paraspinal spasm, forward flexion of 40 degrees, extension to 20 degrees and negative straight leg raising bilaterally.

Petitioner testified he gave his MRI films to Dr. Bergin to review. Dr. Bergin interpreted these films as showing a "desiccated degenerative disc at L5-S1, with central protrusion more off to the right side contacting the right S1 nerve root." Dr. Bergin indicated that the radiologist



who interpreted the MRI noted "some other disc protrusions" but that he was unable to appreciate this.

Dr. Bergin obtained AP and lateral lumbar spine X-rays, which showed some "minimal disc space narrowing at L5-S1." He diagnosed degenerative disc disease at L5-S1 and a disc protrusion at L5-S1 with right S1 radiculopathy. He prescribed Celebrex and four to six weeks of physical therapy. He indicated Petitioner should be limited to light duty with "no lifting greater than 20 pounds occasionally, 10 pounds frequently, with limited bending and twisting." PX 5.

Petitioner underwent an initial therapy evaluation at ATI on May 17, 2011. T. 24. He began attending therapy on a regular basis thereafter. On June 27, 2011, the therapist noted that Petitioner was reporting increased pain after work "since he is being asked to perform activities outside of work restrictions." On July 14, 2011, the therapist noted that Petitioner demonstrated some improvement but was "on his feet all day at work which does not comply with his work restrictions." The therapist found Petitioner to be at a light physical demand level. She described his job as requiring heavy work. PX 5,

On July 19, 2011, Dr. Bergin noted that Petitioner reported some improvement but was still experiencing low back pain radiating into both legs. On examination, he noted forward flexion to about 70 degrees, extension to 20 degrees and negative straight leg raising bilaterally. He recommended that Petitioner undergo work conditioning five times weekly for four weeks. T. 24. He found it reasonable for Petitioner to work full duty "unless it interferes with his work conditioning." PX 5.

Petitioner testified he attended work conditioning at ATI for only one week. T. 25. During that week, he spent five hours per day in work conditioning and four hours per day working. His low back pain worsened during that week. T. 25. On August 2, 2011, Petitioner's work conditioning therapist described Petitioner as "very compliant" and "put[ting] forth a diligent effort." PX 5, p. 54. The next day, the therapist noted that Petitioner complained of increased back pain after using a jackhammer at work. A week later, the therapist reported that the weight Petitioner was using had decreased "during floor to chair lifting due to increased LBP sustained during work." The therapist also noted that Petitioner's capabilities were still falling below the heavy physical demand required by his job. PX 5, p. 61. On August 16, 2011, the therapist noted that Petitioner was making progress "within the light physical demand level." The therapist recommended an additional two to four weeks of work conditioning. PX 5, p. 72. On August 17, 2011, the therapist noted that Petitioner reported falling down stairs, hurting his lower back and right ankle. The therapist observed that Petitioner was limping and wearing a wrap around his right ankle. PX 5, pp. 79, 85.

Petitioner returned to Dr. Bergin on August 18, 2011 and indicated he started feeling "remarkably worse after the work conditioning started." On examination, Dr. Bergin noted positive straight leg raise on the right at about 70 degrees "reproducing pain from the buttock and posterior calf." Dr. Bergin placed work conditioning on hold. He prescribed a Medrol Dose

Pak and a repeat lumbar spine MRI. He indicated Petitioner could continue light duty. PX 5, p. 8.

The repeat MRI, performed without contrast on August 23, 2011, demonstrated a small left foraminal disc protrusion at L4-L5 resulting in minimal encroachment of the left neural foramen and a "small broad-based central disc protrusion at L5-S1 with mild facet arthrosis." The radiologist found no significant stenosis throughout the lumbar spine. PX 6. RX 2.

Petitioner returned to Dr. Bergin on August 30, 2011. T. 26. The doctor interpreted the repeat MRI as showing a "degenerative disc at L5-S1 with a herniated disc off to the right side, consistent with [Petitioner's] symptoms."

Dr. Bergin described Petitioner's gait as antalgic. On examination, he noted positive straight leg raising on the right at about 70 degrees reproducing pain in the buttock and posterior thigh into the calf. He kept Petitioner off work and referred him to Dr. Chang for a course of epidural steroid injections. PX 5, p. 9.

Petitioner returned to Dr. Bergin on September 27, 2011, with the doctor noting that no epidural injections had been approved as of yet. The doctor again noted an antalgic gait and positive straight leg raising on the right at 70 degrees. The doctor prescribed Tramadol. He again recommended that Petitioner stay off work and see Dr. Chang for injections. PX 5, p. 10. T. 26.

Petitioner testified he last received temporary total disability benefits on October 3, 2011. He denied working in any capacity after October 3, 2011. T. 29.

At Respondent's request, Petitioner saw Dr. Andersson for a Section 12 examination on October 4, 2011. In his report of the same date, Dr. Andersson indicated he reviewed an "injury report" which stated that Petitioner was lifting two tires on March 11, 2011 when he developed lumbar and cervical pain. He also indicated that Petitioner saw Dr. "Sorokin" on April 15, 2011, with this doctor stating Petitioner should consider an epidural injection "if the EMG was positive." Dr. Andersson did not reference any EMG report. He noted that "additional" epidural steroid injections were now under consideration.

Dr. Andersson noted that Petitioner complained of pain radiating down the right side of his back into the back of his right leg and calf and occasionally into his foot.

On examination, Dr. Andersson noted a mildly decreased range of lumbar spine motion with flexion to 40 degrees, extension to 20 degrees and lateral bending to 20 degrees. Straight leg raising was negative bilaterally.

Dr. Andersson indicated he personally reviewed the repeat MRI of August 23, 2011. He interpreted this study as showing mild degenerative changes at L4-L5, moderate degenerative

changes at L5-S1 and a right-sided bulge causing mild to moderate spinal stenosis foraminally at L5-S1.

Dr. Andersson found Petitioner's complaints and examination compatible with a "mild S1 nerve root irritation." He found it "unlikely that the alleged accident would be a cause of a herniation without causing significant radicular symptoms." He noted that Petitioner's symptoms were all left-sided when he saw Dr. Zelby and that his symptoms were "now on the right side." In his view, the "only factor in favor of this being related to the alleged work accident is that that is when [Ppetitioner] started having back pain." He stated that Petitioner currently exhibited only subjective abnormalities, i.e., tenderness, decreased range of motion and mild sensory changes. He indicated Petitioner would benefit from a transforaminal epidural steroid injection at L5-S1 on the right side, possibly followed by three to four weeks of therapy. He opined that Petitioner could work full-time but should be limited to ground work, minimum walking and lifting of only 10 pounds occasionally until a week after the injection. He projected that Petitioner would reach maximum medical improvement over the following three to four weeks. RX 3.

When Petitioner next saw Dr. Bergin, on October 25, 2011, the doctor again noted that Petitioner was awaiting approval of the recommended injections. The doctor's examination findings were unchanged. He kept Petitioner off work and again recommended injections by Dr. Chang. PX 5, p. 12.

Ppetitioner saw Dr. Chang on October 27, 2011. The doctor indicated that Petitioner was trying to lift a tire while changing brakes on March 11, 2011, when he "slipped and fell," developing back pain.

Dr. Chang described Petitioner's gait as antalgic. He noted that the range of lumbar spine motion was "limited to about 50% of normal in all directions." Straight leg raising was positive bilaterally at 30 degrees. Sensation was decreased in the posterolateral right thigh and posterior right calf.

Dr. Chang recommended a series of epidural injections. He administered the first such injection at the L4-S1 interspace, slightly right of midline. He prescribed Lyrica and Aleve and instructed Petitioner to return in two to three weeks. PX 7, pp. 2-3. T. 26.

Ppetitioner returned to Dr. Chang on November 17, 2011 and reported 20% improvement. The doctor administered a second epidural injection, again at L5-S1. T. 27. He noted that Petitioner had not yet started Lyrica or Aleve due to insurance issues. He again recommended these medications. PX 7, pp. 6-7.

On December 8, 2011, Petitioner returned to Dr. Chang and reported 50% lower back pain improvement and "more than 90%" improvement of his leg pain. The doctor recommended a third injection. The doctor administered this injection on December 23, 2011. T. 27. He instructed Petitioner to return to him in about a month. PX 7, pp. 9-10.

Petitioner testified that he experienced some pain relief after each injection, but only for about a week. T. 27.

On December 13, 2011, Dr. Bergin noted that Petitioner had undergone two injections to date and still complained of daily low back pain. The doctor recommended a six-week course of therapy. He kept Petitioner off work so he could avoid aggravating his condition. PX 6, p. 14.

Petitioner underwent additional therapy at ATI between December 19, 2011 and January 17, 2012. PX 5.

Petitioner returned to Dr. Chang on February 9, 2012 and reported that his symptoms worsened about two weeks after the third injection. He complained of back and bilateral leg pain. The doctor reviewed epidurograms from the injections and noted a "significant amount of adhesions with a very thin spread of the dye." He urged Petitioner to discuss his surgical options with Dr. Bergin. After Petitioner inquired about non-surgical options, Dr. Chang indicated Petitioner might benefit from a "caudal with lysis of adhesions procedure that causes the medicine to spread a lot better than previous injections." He also indicated Petitioner might need a discogram prior to surgery "since he has multiple levels of pathology." He prescribed Ultracet and indicated Petitioner should continue taking Lyrica and Naprelan. PX 7, pp. 10-11.

On February 21, 2012, Petitioner returned to Dr. Bergin and complained of back and bilateral leg pain, right much worse than left. Petitioner indicated he had undergone three injections "without any lasting relief."

On examination, Dr. Bergin noted moderate lumbar spasm, painful flexion and positive straight leg raising on the right at about 70 degrees reproducing pain into the calf.

Dr. Bergin noted that Dr. Chang had recommended a discogram. Dr. Bergin agreed with this recommendation. He prescribed a discogram at L5-S1 with L4-L5 as a control. He instructed Petitioner to remain off work until he could re-evaluate him following the discogram. PX 6, p. 15. T. 27.

On March 9, 2012, Petitioner's original counsel withdrew and Petitioner's current counsel substituted into the case.

On April 23, 2012, Petitioner's current counsel sent Respondent's counsel a letter requesting payment of temporary total disability benefits since October 3, 2011 and authorization of the recommended discogram. PX 8.

On May 31, 2012, Respondent's counsel sent Petitioner's counsel a letter citing Dr. Andersson's October 2011 report as a basis for contesting causal connection. RX 5, Exh A.

On November 29, 2012, Dr. Bergin again recommended the discogram and instructed Petitioner to remain off work. PX 4.

On January 3, 2013, Petitioner filed a Petition for Penalties and Fees referencing an agreement reached following a pre-trial held on October 30, 2012 and indicating Respondent would not agree to authorize the recommended discogram unless the discogram was performed at a facility of Respondent's selection. Petitioner requested that penalties and fees be imposed on Respondent. PX 10.

At Respondent's request, Dr. Andersson re-examined Petitioner on January 10, 2013. In his report of the same date, Dr. Andersson noted that Petitioner reported only transient improvement following three epidural injections and that Dr. Bergin had recommended a discogram. On examination, Dr. Andersson noted a decreased range of lumbar spine motion, negative straight leg raising bilaterally and "negative" non-organic signs.

Dr. Andersson reviewed the two MRI scans. He interpreted the August 23, 2011 scan as showing no evidence of a specific disc herniation but mild to moderate spinal stenosis foraminally at L5-S1.

Dr. Andersson opined that Petitioner's failure to respond to the injections was "not an indication to perform a discogram." He indicated he was having a "hard time" relating Petitioner's increased back pain to the work accident, based on the first MRI scan. He recommended that Petitioner undergo another lumbar spine MRI, given that the August 2011 scan was a year and a half old. He saw no indication for a discogram or fusion based on Petitioner's presentation and imaging studies. He found Petitioner capable of performing light duty, with lifting of 20 pounds occasionally and 10 pounds repetitively. He characterized this restriction as "temporary" and unrelated to the work accident. He found "no hard objective findings to substantiate [Petitioner's] subjective complaints or the fact he is still not working." RX 4.

Petitioner returned to Dr. Bergin on January 11, 2013. Petitioner complained of pain radiating from the middle of his lower lumbar spine into both buttocks. Petitioner also complained of numbness and tingling running down both legs. Dr. Bergin noted that he was waiting to receive written authorization of the previously recommended discogram.

On examination, Dr. Bergin noted negative straight leg raising, normal heel and toe walking, moderate lumbar tenderness to palpation and normal strength and sensation. He also noted that inconsistent behavioral responses were absent. He prescribed Tramadol, wrote out an order for a CT scan and discogram and instructed Petitioner to remain off work and return to him once these studies had been completed. PX 4.

On January 22, 2013, Respondent filed a Response to Petitioner's Petition for Penalties and Fees referencing Dr. Andersson's reports and alleging, inter alia, that it authorized a CT

discogram through "One Call Medical" and made a permanency advance of \$3,500 following a December 7, 2012 pre-trial conference. RX 5.

Petitioner testified he has been off work since August 30, 2011 at Dr. Bergin's direction. When he last saw Dr. Bergin, on January 11, 2013, the doctor recommended a CT scan as well as a discogram. T. 28-29. Petitioner testified he wants to proceed with the CT discogram. T. 29. His back feels "bad" and he is still experiencing pain running down his legs. If he stands up too quickly, he feels as if something is "stuck" in his back. T. 30.

Under cross-examination, Petitioner was unable to recall exactly when Respondent hired him. T. 31. He was thus unable to agree with records showing a hire date of October 25, 2010. T. 31. His accident occurred in a rail yard known as "CN Harvey." T. 31. He did not know if anyone witnessed the accident. A lot of workers were at the rail yard but they did not all work in the same location. T. 31. He reported the accident to the yard manager, David Rescendiz. T. 32. He knows Edgar Diaz, the "company supervisor." T. 32. He presented his restrictions to Respondent on the day of the accident, immediately after leaving the Clearing Clinic. T. 33. He actually resumed working the next day, March 12, 2011. The job he returned to was not within his restrictions. He was still required to change tires and use vibratory tools such as air guns. It was painful to use the air guns. T. 33. His job duties remained the same thereafter. He continued working as a mechanic until August 30, 2011. He recalled being transferred to another location at some point. When asked whether Respondent suspended him for a week in June because he was not showing up to work, he testified he sometimes left work early due to the intensity of his back pain. When he did leave early, he always informed the person who was "in charge of that location." He saw Dr. Bergin because his original attorney recommended this doctor to him. The company doctors were not doing anything for him other than giving him pills. T. 36. He recalled Dr. Bergin allowing him to resume full duty as of July 19<sup>th</sup>. Whenever he received work restrictions from Dr. Bergin, he presented those restrictions to David Rescendiz but "they always wanted [him] to continue doing [his] job as if [he] didn't have any restrictions." T. 37. On September 27, 2011, he gave Edgar Diaz a slip from Dr. Bergin. The slip stated he was to be off work and would return to the doctor in four weeks. T. 38. When he next saw Dr. Bergin, in October, he received another slip keeping him off work four weeks. He gave that slip to David Rescendiz. He does not know whether Rescendiz gave this slip to Edgar Diaz because Diaz did not work in the yard where the accident occurred. Diaz worked in an office in Chicago. T. 39. The last two times he went to Dr. Bergin, he did not deliver any slip or paper to Respondent. T. 39. He did not recall talking with Diaz by phone at any point after August of 2011. T. 40. He did not quit his job with Respondent. He stopped going to work based on his doctor's instructions. T. 40. He has not looked for work since August 30, 2011. He has not returned to Respondent to request restricted duty because the type of job he has does not lend itself to restrictions. If Respondent could have accommodated him, it would have done so from the outset. T. 41. He has not filed claims for unemployment or Social Security disability benefits. He gets by because his live-in girlfriend, who is the mother of his child, works. His girlfriend's parents have also given him financial assistance. T. 41-43. His girlfriend works during the day. He sometimes takes care of his child during the day. His

child is a year and a half old. T. 43. There are times when his back hurts so much that he cannot take care of his child. T. 45.

On redirect, Petitioner testified he did not recall whether Dr. Bergin qualified his July 19, 2011 full-duty release in any way. He has not spoken with Diaz about his claim. T. 46-47.

Edgar Diaz testified on behalf of Respondent. Diaz testified he began working for Respondent in August of 2006. At that time, he supervised five mechanics. In late 2008, he was promoted to his current job, maintenance and repair manager. T. 49-50, 63.

Diaz testified he is familiar with Petitioner. Petitioner worked at Respondent's CN Harvey location. David Rescendiz was Petitioner's supervisor at that location. He (Diaz) is Rescendiz's supervisor. Diaz visited the CN Harvey location at least three times a week. T. 51. Petitioner worked as a chassis mechanic at CN Harvey.

Diaz testified he learned of Petitioner's accident from a second shift supervisor. The day after the accident, Petitioner gave him a note from the clinic stating he could not lift anything heavier than 20 or 25 pounds. T. 52. After Petitioner presented this note, he continued working as a mechanic but doing only "easy stuff." Petitioner was paired up with another man who performed any heavy lifting that might be required. T. 53-54. This went on for some months. In August of 2011, Diaz transferred Petitioner to Respondent's Elwood location because "the job [at CN Harvey] was getting a little more difficult for [Petitioner] to do." T. 54. Between the accident and the transfer, there were times when Petitioner would leave early or fail to advise Respondent he would be missing work due to a doctor's appointment. In June of 2011, Respondent suspended Petitioner for a week based on a violation of Respondent's "no call/no show" policy. T. 55. At the Elwood location, Petitioner worked inside and was only required to dispose of garbage and clean offices and bathrooms. T. 57. Petitioner did not have to do any heavy lifting. T. 55-56. During this time frame, Petitioner gave him light duty notes from his doctor. Respondent does not have a "policy" of providing light duty but Respondent will provide light duty if an "open space" is available. T. 57. Eventually, Petitioner produced a slip indicating he needed injections and was going to be off work for four weeks. Once those four weeks passed, Petitioner "was going to report back to" Diaz. Diaz recalled Petitioner giving him the "off work" slip in September. Petitioner never again reported to work. T. 58. Petitioner failed to show up after the four weeks passed. T. 58. In the early part of 2012, Petitioner called Diaz on his work phone and asked Diaz "if he still had his job and if he would be able to come back to work." Diaz told Petitioner "yes, just bring me a doctor's note so I can try to accommodate you." T. 60. Petitioner never appeared. If Petitioner had brought in a light duty note at that point, Respondent would have accommodated him. T. 61.

Diaz testified he has not spoken with Petitioner since their phone conversation. Petitioner's job has been filled by another mechanic. T. 61-62.

Diaz testified he interviewed Petitioner and hired Petitioner on October 25, 2010. T. 62.

Under cross-examination, Diaz testified that Rescendiz handed out job assignments to the mechanics and handled Respondent's day-to-day operations at the CN Harvey yard. T. 64. There were periods during which Diaz might not see a worker for a number of days during a particular week. T. 64. Diaz is always on call. He works "24/7" and has to be available to supervisors on two different shifts. If there are no "on call" situations, he works from 7:00 AM to 4:30 PM, Monday through Saturday. T. 65.

Diaz testified that changing a tire constitutes "heavy work." A tire, without the rim, weighs 65 pounds. With the rim, a tire weighs "a good 80 pounds." T. 66. Depending on the assignment, a mechanic might have to remove two tires. A brake job is "even heavier because there are two tires attached together." Those two tires would weigh around 140 pounds. T. 66.

Diaz acknowledged that he and Petitioner did not really have the same schedule and that he did not see Petitioner every workday. T. 67. Diaz testified he directed Rescendiz to accommodate Petitioner's restrictions. Diaz also discussed the restrictions on site with Petitioner when Petitioner presented the slips. T. 67. To the best of Diaz's knowledge, Rescendiz gave Petitioner "little" or "minor" stuff to do. T. 68. When Petitioner worked at the Elwood facility, he cleaned one big office and bathrooms. He also had to dispose of paper that was in bins that were about 1 1/2 feet tall. T. 68. Diaz testified he transferred Petitioner to Elwood because Petitioner had a restriction indicating he could work only three or four hours per day. Petitioner worked at Elwood while he was undergoing work conditioning. Petitioner worked at Elwood for a week or two. T. 69, 72. Cleaning the bathrooms and disposing of garbage required a little bit of twisting and bending. T. 70. He knows it was Petitioner who called him in early 2012 because he had Petitioner's phone number stored in his cell phone and he had caller ID. T. 70. He was not aware that a doctor had Petitioner off work in early 2012. T. 71. Petitioner would have been required to present restrictions in order to receive light duty work. T. 72.

Diaz testified it was his understanding that Petitioner was given light duty assignments (such as changing a light rather than a tire) before Petitioner was transferred to Elwood. T. 73.

On redirect, Diaz testified that Petitioner never complained to him that his restrictions were not being accommodated. There were occasions, however, when Petitioner "would hurt more than other times." On those occasions, Diaz would tell Petitioner, "okay, take it easy." T. 73. Diaz never received information indicating that Petitioner's restrictions were not being accommodated. T. 74. When Petitioner presented an "off work" slip in September of 2011, it was Diaz's expectation that Petitioner would return in four weeks to present another slip. Petitioner did not return. Diaz did not hear from Petitioner again until 2012. T. 74-75.

#### Arbitrator's Credibility Assessment

There were discrepancies between Petitioner's and Diaz's accounts of the work duties Petitioner was required to perform following his accident. In the Arbitrator's view, David



Rescendiz was in the best position to testify concerning those duties since Rescendiz was Petitioner's direct, on-site supervisor. The Arbitrator finds it significant that Respondent called Diaz rather than Rescendiz. REO Movers, Inc. v. Industrial Commission, 226 Ill.App.3d 216, 223-224 (1<sup>st</sup> Dist. 1992). Diaz acknowledged he and Petitioner did not have the same work schedule and there could be days during each work week when he and Petitioner would not see one another.

While Petitioner had some difficulty recalling events, the Arbitrator found him credible overall. On the issue of Petitioner's post-accident work duties and communications with Respondent, the Arbitrator finds Petitioner more credible than Diaz. Petitioner's testimony that Respondent did not accommodate his restrictions at the rail yard is supported by the physical therapy records of June and July 2011.

#### Arbitrator's Conclusions of Law

**Did Petitioner establish a causal connection between his undisputed work accident of March 11, 2011 and his current condition of ill-being?**

The Arbitrator finds that Petitioner met his burden of proof with respect to the issue of causal connection. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible testimony that he had no back problems prior to the work accident; 2) Petitioner's ability to perform very strenuous truck mechanic duties during the months between his hiring and his work accident; 3) the abrupt change in Petitioner's condition following the accident; 4) the consistent accounts of the accident and post-accident complaints set forth in the treatment records; and 5) the causation-related opinions set forth in the treatment records.

The Arbitrator acknowledges that therapy records dated August 17, 2011 reflect that Petitioner reported having fallen, injuring his ankle and back. The Arbitrator does not view this fall as severing the chain of causation since Petitioner was reporting increased back symptoms secondary to work and work conditioning in June and July of 2011, prior to the fall.

The Arbitrator assigns little weight to Dr. Andersson's causation-related opinions. Dr. Andersson did not question Petitioner's credibility and recommended treatment/testing and work restrictions in both of his reports. RX 3-4.

**Is Petitioner entitled to reasonable and necessary medical expenses?**

Petitioner claims outstanding medical expenses from ATI Physical Therapy (\$4229.35, PX 5A) and APAC Group (Dr. Chang, \$250.00, 2/15/12 office visit, PX 7A). Respondent raised no objection to these bills. T. 81, 84.

Having found in Petitioner's favor on the issue of causation, the Arbitrator awards Petitioner reasonable and necessary medical expenses in the amount of \$4,479.35 pursuant to Sections 8(a) and 8.2 of the Act.

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**Is Petitioner entitled to temporary total disability benefits?**

14IWCC0153

Petitioner claims temporary total disability benefits running from August 30, 2011, the date on which Dr. Bergin took Petitioner off work, through January 22, 2013, the date of hearing. This is a period of 73 1/7 weeks. Respondent disputes this claim and maintains that Petitioner was temporarily totally disabled from August 30, 2011 through October 4, 2011, the date of Dr. Andersson's initial Section 12 examination.

In analyzing the issue of temporary total disability, the Arbitrator notes that, while Dr. Andersson questioned causation, he recommended work restrictions and treatment or testing in both of his reports. In his initial report, Dr. Andersson found Petitioner's complaints consistent with a "mild S1 nerve root irritation." He recommended an epidural steroid injection at L5-S1 on the right side and found Petitioner capable of ground level work with no lifting over 10 pounds and minimal walking. RX 3. In his second report, he noted that Petitioner experienced only transient improvement from three epidural injections. He recommended a repeat lumbar spine MRI and temporary work restrictions. RX 4.

The Arbitrator also notes that Dr. Andersson did not document any positive Waddell findings or other inconsistencies on either October 4, 2011 or January 10, 2013.

Based on the foregoing credibility- and causation-related findings, and in reliance on Dr. Bergin's "off work" notes and CT discogram prescription, the Arbitrator finds that Petitioner was temporarily totally disabled from August 30, 2011 through January 22, 2013, a period of 73 1/7 weeks. The Arbitrator views Petitioner's current condition as unstable. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010).

**Is Petitioner entitled to prospective care?**

Petitioner seeks prospective care in the form of a CT discogram, as recommended by Drs. Bergin and Chang. Respondent relies on Dr. Andersson, its Section 12 examiner, in arguing that Petitioner failed to prove causation and does not require such a study.

Having found in Petitioner's favor on the issue of causation, and noting that Dr. Andersson in fact recommended additional testing, albeit a lumbar spine MRI rather than a CT discogram, in January of 2013, the Arbitrator awards prospective care in the form of the CT discogram recommended by Drs. Bergin and Chang.

**Is Respondent liable for penalties and fees?**

In assessing Respondent's liability for penalties and fees, the Arbitrator has given consideration not only to the parties' pleadings but also to the August 17, 2011 therapy note, the change in attorneys, the opinions that Respondent solicited from Dr. Andersson, the advance that Respondent made prior to hearing and the representations Respondent made

**14IWCC0153**

concerning the discogram authorization. While the Arbitrator has elected not to adopt Dr. Andersson's causation-related opinions, the Arbitrator declines to award penalties and fees in this case.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Robinson,  
 Petitioner,

vs.

NO: 10 WC 42796

Village of Schaumburg,  
 Respondent.

**14IWCC0154**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent of Petitioner's permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.


IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 27 2014  
 KWL/vf  
 O-2/10/14  
 42

  
 Kevin W. Lamborn

  
 Thomas J. Tyrrell

  
 Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**ROBINSON, JAMES**

Employee/Petitioner

Case# **10WC042796**

**14IWCC0154**

**VILLAGE OF SCHAUMBURG**

Employer/Respondent

On 3/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0787 FOOTE MEYERS MIELKE & FLOWERS LLC  
RYAN P THERIAULT  
3 N 2ND ST SUITE 300  
ST CHARLES, IL 60174

0481 MACIOROWSKI SACKMANN & ULRICH  
ROBERT ULRICH  
10 S RIVERSIDE PLZ SUITE 2290  
CHICAGO, IL 60606

STATE OF ILLINOIS )

)SS.

COUNTY OF COOK )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**141WCC0154**

**JAMES ROBINSON**

Employee/Petitioner

v.

**VILLAGE OF SCHAUMBURG**

Employer/Respondent

Case # 10 WC 42796

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **MILTON BLACK**, Arbitrator of the Commission, in the city of **CHICAGO**, on **OCTOBER 18, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

FINDINGS

On **OCTOBER 14, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$62,764.00**; the average weekly wage was **\$1,207.00**.

On the date of accident, Petitioner was **27** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$669.64/week for 10 weeks, because the injuries sustained caused the 2% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

**March 5, 2013**  
Date

MAR 5 - 2013

FINDINGS OF FACT

Petitioner is a police officer with the Village of Schaumburg. On October 14, 2010, his left ear was lacerated while effectuating an arrest. The Petitioner sought immediate treatment at St. Alexius Medical Center, where he received seven sutures, which were eventually removed. Petitioner testified that he experiences sensitivity in the area of the left ear, especially when wearing sunglasses. The Arbitrator noted a scar at the back the left ear lobe running behind the ear



lobe, from the top of the left ear lobe to the midpoint and a very slight bump on the inside of the top lobe of the left ear.

The scar is not visible when facing the Petitioner.

### CONCLUSIONS OF LAW

**Is the Petitioner's present condition of ill-being causally related to the injury?**

Petitioner testified that he experiences sensitivity and discomfort in the area of the left ear scar, especially when wearing sunglasses. Based upon that testimony, the Arbitrator concludes that the Petitioner's present condition of ill-being is causally related to the work accident.

**What is the nature and extent of the injury?**

Petitioner sustained a permanent scar behind his left ear. The scar is not visible when facing him, but he testified that he experiences sensitivity in the area of the left ear, especially when wearing sunglasses. Based upon the foregoing, the Arbitrator finds that Petitioner has sustained a permanent injury to the integumentary system of the body to the extent of 2% of the person as a whole.



STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF )  
 WINNEBAGO

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Mosqueda,  
 Petitioner,  
 vs.

**14IWCC0155**

NO: 11 WC 42403

Jeff Heeren Trucking Inc.,  
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, permanent partial disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **FEB 27 2014**  
 KWL/vf  
 O-2/10/14  
 42

  
 Kevin W. Lamborn

  
 Thomas J. Tyrrell

  
 Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**14IWCC0155**

Case# 11WC042403

**MOSQUEDA, RICHARD**

Employee/Petitioner

**JEFF HEEREN TRUCKING INC**

Employer/Respondent

On 3/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2489 LAW OFFICE OF JIM BLACK  
JASON ESMOND  
308 W STATE ST SUITE 300  
ROCKFORD, IL 61101

0445 RODDY LEAHY GUILL & ZIMA LTD  
PAUL KRAUTER  
303 W MADISON ST SUITE 1500  
CHICAGO, IL 60606

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Winnebago )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**14IWCC0155**

Case # 11 WC 42403

Richard Mosqueda  
Employee/Petitioner

v.

Consolidated cases: \_\_\_\_\_

Jeff Heeren Trucking Inc.  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Rockford**, on **10/30/12** and **1/18/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

# 14IWCC0155

## FINDINGS

On 7/28/11, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$54,331.16; the average weekly wage was \$1,044.83.

On the date of accident, Petitioner was 41 years of age, *single* with 4 dependent children.

Petitioner *has not* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.


## ORDER

### *Denial of benefits*

The Arbitrator denies benefits based upon finding of no accident and causal connection.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

3/5/13  
\_\_\_\_\_  
Date

MAR 6 - 2013

FINDINGS OF FACT

The Petitioner, Richard Mosqueda, was employed with Jeff Heeren Trucking on July 28, 2011. Mosqueda believed that he worked for Jeff Heeren from April 1, 2011 through September 7, 2011. He stated that he was fired, placed on medical leave and then rehired from September 14, 2011 through October 15, 2011.

Mosqueda testified that he drove a flatbed semi for Jeff Heeren. He carried various products. (T. 8) He stated that on July 28, 2011, he was hauling mulch in Oskaloosa, Iowa. (T. 8) Mosqueda stated that at approximately 5:00 p.m. that day, he was finishing up loading the mulch. (T. 9) He testified that he was strapping the load down, there were pieces of mulch coming off the load, and a piece fell down into his glove. (T. 9) He felt a sharp sting and noticed a little lesion but he proceeded to strap down the load. (T. 9) Mosqueda stated that he then called Jeff and mentioned that he thought maybe he had gotten some poison ivy. He did not get any treatment at that time. (T. 9)

Mosqueda stated that over the next couple of weeks it started to spread over his arm. He testified that he was developing lesions between the webbing of his fingers. Then it went to the other arm. He stated that it spread from head to toe. (T. 10) Mosqueda indicated that the lesions were itchy. He stated that they looked like little mosquito bites or bumps. (T. 10)

While in Pennsylvania, Mosqueda stated that a black mite started coming out of his skin and he decided to seek medical attention. (T. 10) He went to a local walk-in clinic. (T. 11) Treatment began with Dr. O'Neil on August 19, 2011. Mosqueda stated that Dr. O'Neil prescribed scabies treatment, which was permethrin and hydroxyzine. (T. 12)

Records from Dr. O'Neil on August 19, 2011 indicate that Mosqueda was there to discuss a rash present for two to three weeks. The rash was itchy. The skin was described as multiple excoriated areas across forearm webspaces and lower abd-itching. (Px #1) The assessment was rash and skin eruption.

When he returned to Rockford, Mosqueda stated that he went to Physicians Immediate Care for medical treatment. (T. 13) He stated that he was given additional medication. Records from Physicians Immediate

14IWCC0155

Care on August 24, 2011 state Mosqueda developed an erythematous rash that was pruritic over a week ago. He reported continued pruritus whenever he got into his truck. (Px #2) It was noted that Mosqueda reported he saw another physician who prescribed treatment for possible scabies. On exam, he was noted to be an anxious male with multiple lesions on his scalp and right and left upper extremities, which were asymmetric. They were round and erythematous with maculopapular distribution. The assessment was scabies and he was prescribed medication. He was released to work full duty. (Px #2)

A few weeks later, Mosqueda went to Rockford Memorial Hospital emergency room on September 6, 2011. Mosqueda stated that he was in New York when he developed a fever that delayed his trip back to Rockford. (T. 14) That caused him to seek additional medical treatment. (T. 14) The records from Rockford Memorial on September 6 indicate Mosqueda complained of parasites in his skin for several weeks. He described small black flecks that crawl out of his hands. (Px #3) He brought in a bag with multiple Kleenex and various things he used to collect the presumed parasites. (Px #3) Dr. Bannen of Rockford Memorial examined the bag with a magnifying glass and noted there was no evidence of any obvious parasites, scabies or insect parts. (Px #3) In fact, he noted that one of these was a carcass of a dragonfly that was over one inch long. Mosqueda advised Dr. Bannen that he thought he was exposed to something on the road while working as a truck driver. He advised the doctor that he had been using multiple chemicals, including sulfur based petrolatum and organic bug spray. The records from Rockford Memorial indicate that Mosqueda advised Dr. Bannen that when he placed the chemicals on his skin, the bugs or parasites would jump out. He told the doctor that they would jump out of his feet and could be quite large. He also complained that one bug jumped out of the tip of his penis. (Px #3) Dr. Bannen explained to Mosqueda that sometimes stress can cause a sensation of parasitic infection. He could not find anything consistent with infestation. Dr. Bannen was more concerned that it was a manifestation of psychiatric disease, possibly delusional parasitosis. (Px #3) Mosqueda stated that he was referred to a dermatologist, Dr. Hartsough. (T. 14)

Mosqueda presented to Dr. Hartsough on September 9, 2011. (T. 14, Px #4) He reported having parasites all over his body that itched since July 28, 2011. The records of Dr. Hartsough noted that Mosqueda



had no evidence of burrows. (Px #4) He stated that they prescribed Permethrin and Ivermectin. (T. 15)

Mosqueda stated that he noted some improvement.

Dr. Hartsough's records contain a memorandum regarding a phone conversation from September 12, 2011. (Px #4) It was noted by Dr. Hartsough that he was given medication on his September 9, 2011 visit on a preemptory basis and that there was no evidence of scabies. (Px #4)

He had his last medical treatment with Dr. Hartsough on November 2, 2011. (T. 15, Px #4) He was diagnosed with obsessive-compulsive disorder. (Px #4) It was also noted that he could have delusions of parasitosis. (Px #4)

Mosqueda stated that he feels like it's gone. (T. 16) He hasn't noted any recurring lesions or anything since the final medication. (T. 16) Mosqueda testified that he has some scars from the lesion on his left arm, belly, and inner thighs. (T. 17) He stated that since July 28, 2011, no family, friends, or anyone else he has been around has had scabies. (T. 18)

On cross-examination, Mosqueda testified that when he saw Dr. O'Neil on August 19, 2011, he not been itching or scratching himself. (T. 19) He told Dr. O'Neil that he thought he had scabies based upon internet research he did between July 28 and August 19. (T. 20) He agreed that Dr. O'Neil could not find any evidence of insects on his body. (T. 20) Mosqueda then stated that between July 28 and August 19, he was constantly itchy.

When he went to Physicians Immediate Care, Mosqueda told the doctor that he thought he had scabies. (T. 22) They did not find insects on his body. (T. 22) Mosqueda testified that he understood the only way to confirm the diagnosis of scabies was with a biopsy and that he never had one performed. (T. 22-23)

Mosqueda stated the he next received medical care on September 6, 2011 at Rockford Memorial Hospital. (T. 23) He stated that the black larvae had reinfested and starting coming out of his skin again. (T. 23) Mosqueda indicated that he was itchy the entire time but did not scratch. (T. 24) Mosqueda stated that he brought a bag with him to the hospital that he presumed contained parasites. He stated that he could not testify to what the doctor found or did not find. (T. 25) He denied telling the doctor that he had been using multiple

14IWCC0155

chemicals including sulfur based petroleum and organic bug spray. (T. 25) He did not recall telling the doctor that bugs jumped out of his feet. (T. 25) He did not recall the doctor telling him that sometimes stress can be a sensation of parasitic infection. (T. 27) He did not recall the doctor discussing that he was concerned this was a manifestation of psychiatric disease, possibly paranoid delusional parasitosis. (T. 28)

Mosqueda stated that he had not been back to Dr. Hartsough or any other physician for this condition since November 2, 2011.

Jeff Heeren testified on behalf of the respondent. He is the president of Jeff Heeren Trucking and has operated the company since 2000. (T. 31) Heeren stated that he had a phone conversation with Mosqueda in his office on August 19, 2011. (T. 32) He testified that Mosqueda told him he had a medical emergency while driving the truck in northeastern Pennsylvania. (T. 33) Heeren stated that Mosqueda advised him that he just found out his girlfriend and her children had scabies. (T. 33)

The petitioner called Michele Bastien to testify. (T. 39) Bastien stated that she had four children that all live with her. (T. 41) She dated Mosqueda for three weeks around July 28, 2011. (T. 41-42) Bastien denied that either she or her children had scabies around that time. (T. 41) She recalled Mosqueda having a skin condition with openings. She is a registered nurse for the county and had never seen anything like it before. (T. 42) Bastien testified that, in her opinion as a nurse, it was not scabies. (T. 43-44)

### CONCLUSIONS OF LAW

**WITH REGARD TO ISSUES "C" – "DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?" and "F" – "IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?" – THE ARBITRATOR FINDS AS FOLLOWS:**

The Arbitrator denies both accident and causal connection based upon review of medical records and testimony presented at arbitration.

The medical records do not support a compensable accident or a diagnosis of scabies. Mosqueda admitted that when he first sought medical treatment on August 19, 2011, he had done internet research himself on scabies. (T. 20) The records from Dr. O'Neil on August 19, 2011 (Px #1) indicate that Mosqueda noted that

14IWCC0155

the rash was itchy. The arbitrator notes that on cross-examination, Mosqueda denied that he was itchy or scratching. (T. 19) It is noted by the Arbitrator that the assessment by Dr. O'Neil was not scabies. The assessment was rash and skin eruption. There was also noted to be multiple excoriated areas across the forearm web space and lower abdominal with the note of itching. (Px #1) Thus, the medical records appear to contradict the testimony of Mr. Mosqueda.

The records from Physicians Immediate Care do refer to scabies. However, the arbitrator notes it appears as though Mr. Mosqueda was the one who provided the diagnosis of scabies to Physicians Immediate Care. (Px #2)

The Arbitrator also places great reliance upon the records from Rockford Memorial Hospital. It is noted that on cross-examination, Mr. Mosqueda denied advising the doctor at the emergency room at Rockford Memorial that he had been using sulfur based petroleum or an organic bug spray. He did not recall mentioning that bugs were jumping out of his feet. He also did not recall the doctor telling him that sometimes stress could result in a sensation of parasitic infection. He also did not recall being advised that he could have paranoid delusional parasitosis. The Arbitrator notes that that testimony appears to be squarely contradicted by the medical records that Mr. Mosqueda offered into evidence. (Px #3) Those records specifically state that Dr. Bannen in the emergency room of that facility commented that Mosqueda told him he had been using multiple chemicals, including sulfur based petroleum and organic bug spray on his skin. Dr. Bannen also noted that Mosqueda advised him that bugs were jumping out of his feet. Dr. Bannen's records specifically state that he counseled Mr. Mosqueda that stress could sometimes cause the sensation of parasitic infection. They further note that Dr. Bannen was concerned that it could be a manifestation of psychiatric disease and possibly delusional parasitosis.

The Arbitrator also reviewed the medical records from Hartsough. This includes visits on September 9, 2011, a phone conference on September 12, 2011 and a follow-up visit on November 2, 2011. It does not appear as though Hartsough could ever confirm a diagnosis of scabies. In fact, at the last visit, they appeared to also agree that he had delusions of parasitosis.

14IVCC0155

Finally, the Arbitrator notes that Mr. Mosqueda presented Michele Bastien to testify. She indicated they had dated briefly in July of 2011. She noted that while he had some lesions on his skin, it was not what he thought it was. When specifically questioned by the Arbitrator, she indicated that she understood Mr. Mosqueda thought he had scabies and that in her opinion as a nurse, he was not suffering from that condition.

Based upon all of this testimony and the medical records, it is clear that Mr. Mosqueda did not suffer from scabies. Thus, there is no evidence that he had any type of accident that arose out of and in the course of his employment. There is further no evidence that whatever condition he had on his skin was in any way, shape or form was causally related to his employment. If anything, the medical records show some type of paranoid delusion about parasitosis, but again, nothing that was work related. Therefore, the Arbitrator denies both accident and causal connection.

**WITH REGARD TO ISSUE "J" – "WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?" – THE ARBITRATOR FINDS THAT:**

The Arbitrator denies all medical bills as submitted based upon denial of both accident and causal connection.

**WITH REGARD TO ISSUE "L" – "WHAT IS THE NATURE AND EXTENT OF THE INJURY?"**

The Arbitrator denies the Petitioner's request for permanent partial disability based upon failure to prove accident and causal connection.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF )  
 WILLIAMSON

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL SWETLAND,,

Petitioner,

**14IWCC0156**

vs.

NO: 11 WC 49176

STATE OF ILLINOIS-PINCKNEYVILLE CORRECTIONS CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of credit and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner a permanent partial disability award representing 5% loss of the use of the left leg. However, he found that the award was subject to a credit of 25% loss of the left leg in the previous settlement of 09WC11362. Therefore, the Arbitrator awarded no permanency.

Petitioner argues the Arbitrator erred in applying the credit of 25% loss of the use of the left leg in the previous settlement of 09WC11362 to negate the new award of 5% loss of the use of the leg in this case. He cites the Commission decision in *Lair v. State of Illinois – Menard Correctional Center*, 13 IWCC 592. We concur.

**14IWCC0156**

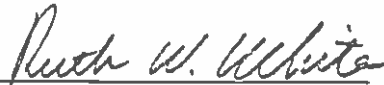
As the Commission pointed out in *Lair*, the Decision of the Arbitrator in this case would suggest that Petitioner's permanent partial disability of his leg is less now than it was after the previous accident; that suggestion is patently absurd. Credit should only apply when the current permanent partial disability is greater than the disability at the time the previous settlement/award was entered. Therefore, the Commission modifies the Decision of the Arbitrator to award Petitioner 30% loss of the use of the left leg and apply the 25% credit based on the settlement in 09 WC 11362 to arrive at a permanent partial disability award of 5% loss of the use of the left leg in this case.

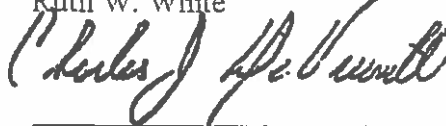
IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$663.04 per week for a period of 10.75 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 30% use of the left leg and Respondent is given credit of 25% loss of the use of the left leg pursuant to the settlement in 09 WC 11362.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

DATED: FEB 27 2014

RWW/dw  
O-2/19/14  
46

  
Ruth W. White

  
Charles J. DeVriendt

  
Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**14IWCC0156**

Case# 11WC049176

**SWETLAND, MICHAEL**

Employee/Petitioner

**SOI/PINCKNEYVILLE CORRECTIONAL CENTER**

Employer/Respondent

On 9/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL  
KYLEE J JORDAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED AS A TRUE AND CORRECT COPY  
PURSUANT TO 820 ILCS 305/14

SEP 6 2013



*[Signature]*  
KIMBERLY E. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Williamson )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
NATURE AND EXTENT ONLY

**14IWCC0156**

Case # 11 WC 49176

Michael Swetland

Employee/Petitioner

v.

State of Illinois/Pinckneyville Correctional Center

Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **August 16, 2013**. By stipulation, the parties agree:

On the date of accident, **December 10, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$57,463.00**, and the average weekly wage was **\$1,105.06**.

At the time of injury, Petitioner was **44** years of age, *single* with **1** dependent child.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$N/A** for TTD, \$      for TPD, \$      for maintenance, and \$      for other benefits, for a total credit of **\$N/A**.



14IWCC0156


After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

**ORDER**

As a result of Petitioner's accident, he sustained a 5% loss of use of his left leg. However, this award is subject to a credit against Petitioner's prior settlement of 25% loss of use of his left leg from case # 09 WC 11362. Therefore no permanency is awarded in this case.

**RULES REGARDING APPEALS** Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

9/4/13  
Date

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## FINDINGS OF FACT

The parties stipulated to notice, accident, and causation.

Respondent has a credit of 25% for the left knee from a previous workers' compensation claim, 09 WC 11362.

On December 10, 2011 the Petitioner experienced an onset of pain. Petitioner broke up an altercation between inmates, and at one point fell to the ground and landed on his left knee.

Petitioner presented to Dr. George Paletta on January 4, 2012. Dr. Paletta had treated Petitioner's left knee in his prior claim. Dr. Paletta noted that his history was significant for a previous left knee surgery three years before.

Petitioner denied any significant swelling but reported pain anteromedially. On exam Dr. Paletta noted full range of motion in the knee. Good patellar mobility. No significant peripatellar tenderness. Patellar compression test was negative. Negative patellar apprehension test. Patellar tendon and quadriceps tendon are clearly intact. He had clear medial joint line tenderness. No lateral joint line tenderness. Ligament exam was entirely normal. Anterior Drawer, Lachman, and pivot shift are all negative. He had a solid endpoint on Lachman testing. Posterior Drawer is negative. No laxity or valgus stress testing. Neurovascular status is intact.

Dr. Paletta's impression was a possible medial meniscus tear versus mild medial collateral ligament sprain. He recommended an MRI scan of the knee. Dr. Paletta noted that if the MRI scan was negative then it was highly likely Petitioner's complaints would resolve on their own. This was Petitioner's only appointment with Dr. Paletta.

Petitioner had a MRI scan of the left knee on January 6, 2012. Dr. Paletta reviewed the findings. The impression was expected postop changes status post partial medial meniscectomy, patellofemoral chondrosis status post previous patellofemoral surgery, and early medial compartment chondrosis. Dr. Paletta noted that there was no evidence of any acute structural injury to the knee. Dr. Paletta further stated that the incident resulted in a temporary increase in symptoms related to his underlying pre-existing knee pathology.

Petitioner testified that he did not miss work nor did he have to work light duty as a result of this incident. Petitioner testified that he now has difficulty climbing stairs, playing with his daughter, and that sometimes his knee pops and swells. Petitioner testified that he has taken 400-600 milligrams of Ibuprofen every day since December 10, 2011. Petitioner testified that he has had a job evaluation from his supervisor since the accident and received a good evaluation. Petitioner further testified he has received no complaints from his supervisor regarding his job performance.

Neither party provided an AMA rating.

## CONCLUSIONS OF LAW

Since the accident occurred after September 1, 2011, Section 8.1(b) of the Act applies. As neither party presented an AMA rating, the Arbitrator relies on the remaining four factors: (i) the occupation of the injured employee; (ii) the age of the employee at the time of the injury; (iii) the employee's future earning capacity; and (iv) evidence of disability corroborated by the treating medical records. Considering those factors, the Arbitrator notes the following:

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(i) Occupation: Petitioner is employed as a Correctional Officer at Pinckneyville Correctional Center. He testified that he is working full duty, in fact he never missed any time from work for this injury. Additionally he testified that he has received a good performance evaluation since returning to work and has had no complaints from any of her supervisors.

(ii) Age: Petitioner was 44-years-old at the time of his injury.

(iii) Earning Capacity: Petitioner has continued to pursue the occupation of Correctional Officer as of the time of trial. No impairment of earning capacity is apparent.

(iv) Disability: Petitioner testified to having continued symptoms and to taking 400-600 milligrams of Ibuprofen every day since December 10, 2011. However, the only evidence of disability corroborated by the medical records are from Dr. Paletta. Petitioner saw Dr. Paletta for one visit, from which Dr. Paletta indicated Petitioner had a temporary increase in symptoms relating to Petitioner's pre-existing, underlying knee condition. The Petitioner's MRI was normal.

Based upon the foregoing, the Arbitrator finds that Petitioner has sustained 5% permanent partial disability to the left leg. However, because of the Petitioner's prior settlement of 25% of the leg, for which Respondent receives a credit, no permanency is awarded in this case.